SUPREME COURT, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

No. 74-721

ORVAL M. RHODES and WILLIAM A. GUFFEY, as Co-Administrators of the Estates of MORIS O. RHODES and BEVERLY J. RHODES, Deceased,

Petitioners,

vs.

REPUBLIC NATIONAL LIFE INSURANCE COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Petitioners,	)
vs.	)
REPUBLIC NATIONAL LIFE INSURANCE COMPANY,	)
Respondent.	)

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Petitioners, ORVAL M. RHODES and WILLIAM A. GUFFEY, respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on July 1, 1974.

Opinion Below

The opinion of the Court of Appeals, reported at 501 F.2d 1213, appears in the Appendix hereto. No opinion was rendered by the District Court for the District of Arizona.

Jurisdiction

The Judgment of the Court of Appeals for the Ninth Circuit was entered on July 1, 1974. A timely petition for rehearing was denied on September 12, 1974, and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 *U.S.C.A.* § 1254(*1*).

Questions Presented

1. Should the Uniform Simultaneous Death Act be applied to construe otherwise ambiguous language of a life insurance policy and thereby cause a forfeiture of the maximum proceeds payable upon the death of the insured.

2. Should the Uniform Simultaneous Death Act be applied in a manner which determines the existence and amount of life insurance proceeds in an ambiguous life insurance contract upon the death of the insured as opposed to being utilized simply as a procedure or method of distribution of pre-existing or pre-determined life insurance proceeds.

3. Did the Court of Appeals for the Ninth Circuit by failing to harmonize the applicable simultaneous death statutes in the State of Arizona create a substantive presumption respecting the survival of the insured over the beneficiary which is contrary to the express language of other simultaneous death

statutes in Arizona where no such presumption exists.

Statutory Provisions Involved

TITLE 14

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> "Where the title of property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived except as provided otherwise in this Article."

A.R.S. § 14-224. *Community Property*

> "Where husband and wife died leaving community property, and there is no sufficient evidence that they have died otherwise than simultaneously, one-half of all the community property shall pass as if the husband had survived and as if such one-half were his separate property and the remaining one-half of the community property shall pass as if the wife had survived and as if one-half were her separate property."

A.R.S. § 14-225. *Insurance Policies.*

"Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary, but if the policy is community property of the insured and his spouse and there is no alternative beneficiary, or no alternative beneficiary except the estate or personal representatives of the insured, the proceeds shall be distributed as community property under Section 14-224."

A.R.S. § 14-226. *Article does not apply if decedent provided otherwise.*

"This Article shall not apply in the case of wills, living trusts, deeds or contracts of insurance, or any other situation where provision is made for distribution of property different from the provisions of this article, or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided."

TITLE 20

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ARTICLE 1. IN GENERAL

A.R.S. § 20-1127. *Simultaneous Deaths.*

"Where the individual insured or the annuitant and the beneficiary designated in a life insurance policy or policy insuring against accidental death or in an annuity contract have died and there is not sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy or contract shall be distributed as if the insured or annuitant had survived the beneficiary, unless otherwise specifically provided in the policy or contract."

Statement of the Case

This dispute arose over the interpretation of the terms of a life insurance policy insuring the life of Beverly J. Rhodes, deceased. The carrier, Republic National Life Insurance Company, (the Company) originally sold a policy to Moris O. Rhodes, deceased, the husband of Beverly J. Rhodes, on February 11, 1964. The Rhodes were residents of Arizona and the policy which was issued to Mr. Rhodes as well as all subsequent additions thereto was community property. Fourteen months after the original policy insuring the life of the husband had been issued, a rider was added to his policy known as "Wife's Insurance Benefit". This was effective April 10, 1965 and insured the life of Beverly J. Rhodes.

The applicable portions of the "Wife's Insurance Benefit" including the caption is set forth as follows:

"WIFE'S INSURANCE BENEFIT

FOR

ADDITIONAL INSURANCE OVER A TERM PERIOD

AND PAYABLE AS A MONTHLY INCOME TO THE END OF THE PERIOD OR UPON ELECTION AS A SINGLE PAYMENT, IF THE INSURED'S WIFE'S DEATH OCCURS DURING THE PERIOD

The Company agrees, subject to the terms and conditions of this Provision and the policy, to pay the following benefits immediately upon due proof of the death of the Insured's wife named in the application, while the policy and this Provision are in force:

1. For each unit of this benefit shown on page 3

   a. $1,000 payable immediately in one sum.

   b. If the wife has not attained age 50, a monthly income of $50 beginning at the date of the Insured's wife's death and payable at monthly intervals until the end of the month in which the Insured's wife would have attained age 50.

* * *

The Date of Issue of this Provision, which is the date the Term Period begins, and the date the Term Period ends are as specified on page 3 for this Benefit.

The Benefit under this Provision is payable in addition to any amount otherwise payable under the policy.

This Provision is made a part of the policy to which it is attached, in consideration of the application, a copy of which is attached to and made a part of the policy, and payment of the premiums

specified on page 3 applicable to this Benefit and the Life Insurance Benefit.

* * *

Payment of Proceeds

Any proceeds payable under this Provision because of the death of the Insured's wife will be paid to the Insured, if living, otherwise to the estate of the Insured's wife, unless otherwise provided. The payee may elect to receive the commuted value of such monthly income in one sum. The commuted value shall be computed by discounting the monthly income payable at 3% interest, compounded annually.

* * *

Benefit After Death of Insured

In the event of the Insured's death while the policy and this Benefit are in force, in place of all other benefits hereunder, the Company will issue to the Insured's wife a paid-up term life insurance policy in the amount of $1,000 Sum Insured for each unit of this Benefit shown on page 3, which will expire on the policy anniversary following the Insured's wife's 65th birthday.

Termination

This Provision will terminate without value, subject to the 'Exchange of Policy for a New Policy' Provision, upon the earliest of

a. The lapse, exchange or termination of the policy, or

b. The payment of application of the surrender value of the policy, or

c. The due date of the premium next

following receipt at the Company's Home Office of a request for discontinuance by written notice and presentation of the policy for adjustment, or

d. The date the policy becomes fully paid-up, or

e. The end of the Term Period."

On September 5, 1970, the Rhodes, together with their children, died in a flash flood near Payson, Arizona. There was no evidence to establish that the deaths were otherwise than simultaneous. The insurance policy contains no language regarding simultaneous death and the payment or lack of payment of the "Wife's Insurance Benefit" in the event of simultaneous death of the husband and wife.

The Company admitted liability on the Wife's Benefit Rider but limited its liability to $3,000 rather than the $26,625.30 claimed by the Administrators of the estate of Mr. and Mrs. Rhodes.

Suit was brought in the District Court for the State of Arizona seeking construction of the terms of the policy and requesting judgment for the greater amount of proceeds. The District Court found the "Wife's Insurance Benefit" insuring the life of Beverly J. Rhodes, deceased, to be ambiguous and directed an entry of summary judgment in favor of the Administrators of the Rhodes' Estate and against the Company for the full amount of the proceeds available.

The Court of Appeals although stating, "we concede that the policy should have been drafted with more clarity and that the Wife's Benefit Rider may be difficult to understand," and in the concurring opinion, ". . . I devoutly hope that this court's

ability, after much study, to make some sense out of the mindless draftsmanship we found here will not be interpreted by the insurance industry as 'approval' of the contract language which caused all this mischief", found the policy not ambiguous in its terms. The Court of Appeals felt the ambiguity arose only because of lack of knowledge concerning the order of death. The Court went on to apply *Arizona Revised Statute* § 20-1127 substantively and treated Beverly Rhodes as surviving Moris Rhodes her husband thereby entitling the plaintiffs to the lesser amount of insurance proceeds.

Reasons for Granting the Writ

1. THE DECISION BELOW RAISES SIGNIFICANT AND RECURRING PROBLEMS CONCERNING THE CONSTRUCTION OF AMBIGUOUS INSURANCE CONTRACTS.

The Court below has employed a state's Simultaneous Death Act to construe the otherwise ambiguous terms of an insurance contract to determine what proceeds should be payable under that contract. Such a use is novel and here applied in a case of first impression which intensifies the dangerous impact of this decision.

Previous decisions of this Court have consistently held that it is a cardinal principal of insurance law that a policy or contract of insurance is to be construed liberally in favor of the insured or his beneficiary and strictly against the insurer. *Aschenbrenner v. U. S. Fidelity & Guaranty Co.*, 292 U.S. 80 (1933) *reversing* C.C.A., *U. S. Fidelity & Guaranty Co. v. Aschenbrenner*, 65 F.2d 976,

cert. granted, 290 U.S. 622 (1933) and, *rehearing denied*, 292 U.S. 615 (1933); *Stipcich v. Metropolitan Life Ins. Co.*, 277 U.S. 311 (1927); *Liverpool & London & Globe Ins. Co. v. Kearny*, 180 U.S. 132 (1901). Stated more fully the rule is that, "whereby reason of ambiguity in the language employed in a policy or contract of insurance, there is *doubt* or *uncertainty* as to its meaning and is fairly susceptible of two interpretations, one favorable to insured or his beneficiary and the other favorable to the company, the former will be adopted, even though it was the intention of the insurer that the policy or a particular clause or provisions thereof, should have a different meaning; and this rule is especially applicable where the ambiguity or doubt relates to the matters subsequent to the loss or the attaching of liability." 44 C.J.S. *Insurance* § 297, at 1167. (Emphasis supplied).

Other decisions of the Court below have affirmed that rule; "it is settled law that when any provision of an insurance policy is subject to more than one reasonable interpretation, that interpretation which favors the insured is adopted, since the insurer authors the contract of insurance . . . What controls is not the interpretation of the individual words which are not defined in the policy itself, but the interpretation which the *ordinary man* would give to the phrase as a whole taken in the context of the whole policy and the *average man's knowledge* of the way insurance is set up." *Prudential Ins. Co. of America v. Barnes*, 285 F.2d 299, 300 (9th Cir. 1960, Ariz.) (Emphasis supplied).

In the policy in question, no mention is made as to the payment of proceeds in case of simultaneous death. The contract is ambiguous as to what amount is payable in that instance. The caption which is in bold faced type states that the benefit is: "ADDITIONAL INSURANCE OVER A TERM PERIOD AND PAYABLE AS A MONTHLY INCOME TO THE END OF THE PERIOD OR UPON ELECTION AS A SINGLE PAYMENT IF THE INSURED'S WIFE'S DEATH

OCCURS DURING THIS PERIOD". Under the payment of proceeds section, it states:

> "Any proceeds payable under this Provision because of the death of the insured's wife will be paid to the Insured, if living, otherwise to the estate of the Insured's wife, unless otherwise provided."

There is no other provision made contrary to this. The Court below failed to consider how a reasonable man might read those provisions, especially in light of the fact that a premium on $30,000 worth of insurance was being paid and that a physical examination was required of the wife because the proceeds applied for were in excess of $30,000.

Instead of affirming the obvious ambiguity of the contract, construing it against the insurer and declaring full benefits due, the Court below used a tool historically applied in channeling the proceeds of an insurance contract *after* they had been determined, to construct what the Court wanted to believe the policy was meant to pay as proceeds irrespective of how the insured may have believed the proceeds were to be paid. Such use of Simultaneous Death Act is a very dangerous precedent to set in that an insurance contract can now become more than is shown on its face. The sophisticated and resourceful insurance company can now rely on statutes otherwise mystical and hidden to the insurance purchaser to limit coverage while charging a disproportionate premium based upon what the insurance contract *appears* to provide as benefits.

Contrary to the opinion of the Court below, its use of the Simultaneous Death Act is contrary to any other decisions of that Court or other Appellate Courts. The cases cited by the Court (pages 7 and 8 of appended Opinion) deal with the use of a

Simultaneous Death Act in establishing ownership interests in the insurance policy for estate tax purposes, not construing the ambiguous terms of those policies to determine the actual amount of proceeds payable. Such an application has far less damaging effect than what occurs in this instance and while in theory such an application may appear to be a logical step in the progressive extention of the use of such a statute, petitioners respectfully urge that it is a step too near the brink of disaster for insurance law in the United States if allowed to remain a valid precedent.

The Court stated that it could not carve out an artificial exception to a well recognized statutory interpretation. What it has done in effect is to carve out a large loophole through which insurance companies may drive their premium trucks loaded with unpaid benefits which they have obtained from the public as a result of this lower Court's ruling which can now be used to protect their "mindless draftmanship" of insurance contracts.

As was noted, the Court gave little, if any, recognition of the statutory scheme which had been enacted in Arizona respecting distribution of money and property following death including insurance proceeds nor the fact that the policy in question was community property. The Court did nothing to harmonize the Arizona statutes. The applicable statute which should have been applied is *A.R.S.* § 14-225, INSURANCE POLICIES. It provides after recognizing that the proceeds of the policy shall be distributed as if the insured had survived the beneficiary,

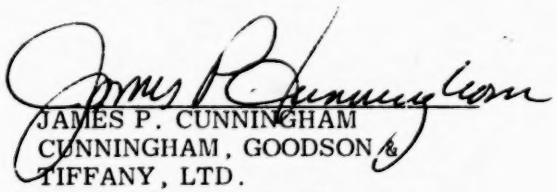
> ". . . but if the policy is community property of the insured and his spouse and there is no alternative beneficiary, or no alternative beneficiary except the estate or personal representatives of the insured, the proceeds shall be distributed as community property under §14-224."

It is not possible from this language to find a conclusive presumption that the insured survived the beneficiary since it is expressly otherwise provided if the policy is "community property". The opinion of the Court by not recognizing this statute leaves the law of Arizona and any other community property state which may have such a statutory scheme, in a state of confusion.

Conclusion

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Ninth Circuit.

Respectfully submitted,



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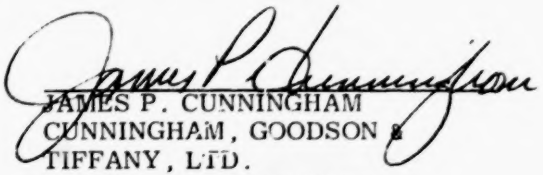
[APPENDIX FOLLOWS]

Certificate of Service

I, JAMES P. CUNNINGHAM, do hereby certify that on this the 6th day of December, 1974, three (3) copies of the Petition for Writ of Certiorari, in final printed form, were mailed, postage prepaid, to ROBERT W. HOLLAND, 1400 United Bank Building, 3550 North Central Avenue, Phoenix, Arizona 85012, Counsel for the Respondent. I further certify that all parties required to be served have been served.



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(CORRECTED OPINION)

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ORVAL M. RHODES and WILLIAM A. GUFFEY, as Co-Administrators of the Estate of MORIS O. RHODES and BEVERLY J. RHODES, Deceased,
Plaintiffs-Appellees,
vs.
REPUBLIC NATIONAL LIFE INSURANCE COMPANY,
Defendant-Appellant.

No. 72-2505

OPINION

[July 1, 1974]

Appeal from the United States District Court
for the District of Arizona

Before: CARTER, GOODWIN and WALLACE, Circuit Judges.

WALLACE, Circuit Judge:

The administrators of the estates of Moris O. Rhodes and Beverly J. Rhodes, deceased, sought a declaratory judgment as to the correct construction of a life insurance policy issued by Republic National Life Insurance Company (the Company) through its predecessor, Pacific National Life Assurance Company. The Company admitted coverage, but argued that its liability was limited to $3,000, rather than $26,625.30 as claimed by the administrators. The district court granted the administrators' motion for summary judgment and entered judgment against the Company in the amount of $23,625.30. The Company appeals and we reverse.

On February 11, 1964, Moris Rhodes entered into a contract of life insurance with the Company (the Husband's Policy). Under the policy the Company was liable, upon proof of Mr. Rhodes' death, for a lump sum and for a monthly income benefit until the end of the protection period. In April, 1965, the policy was amended by the addition of a rider entitled "CHILDREN'S

BENEFIT FOR TERM INSURANCE TO AGE 25" (the children's Benefit Rider) under which the life of each of Rhodes' three children was insured for a lump sum. The Company has settled its liability under the Children's Benefit Rider and Mr. Rhodes' policy and they are discussed here only as background. In April, 1965, the Husband's Policy was also amended by the addition of a rider entitled "WIFE'S INSURANCE BENEFIT" (the Wife's Benefit Rider). The correct construction of this rider is the subject of this dispute. On September 5, 1970, the Rhodes, together with their children, perished in a flash flood near Payson, Arizona. There was no evidence that their deaths were otherwise than simultaneous.

The Wife's Benefit Rider is captioned by the following:

> WIFE'S INSURANCE BENEFIT FOR ADDITIONAL INSURANCE OVER A TERM PERIOD AND PAYABLE AS A MONTHLY INCOME TO THE END OF THE PERIOD OR UPON ELECTION AS A SINGLE PAYMENT, IF THE INSURED'S WIFE'S DEATH OCCURS DURING THE PERIOD

The benefit paragraph of the rider reads as follows:

> The Company agrees, subject to the terms and conditions of this Provision and the Policy, to pay the following benefits immediately upon due proof of the death of the Insured's wife named in the application, while the policy and this Provision are in force:
>
> 1. For each unit of this benefit shown on page 3 [3 units]
>
> a. $1,000 payable immediately in one sum.
>
> b. If the wife has not attained age 50, a monthly income of $50 beginning at the date of the Insured's wife's death and payable at monthly intervals until the end of the month in which the Insured's wife would have attained age 50.
>
> 2. If a Children's Benefit is attached to the policy, it will be continued in force as fully paid-up term insurance to the child's 25th birthday.
>
> . . . .
>
> The Benefit under this Provision is payable in addition to any amount otherwise payable under the policy.

This Provision is made a part of the policy to which it is attached, in consideration of the application, a copy of which is attached to and made a part of the policy, and payment of the premiums specified on page 3 applicable to this Benefit and the Life Insurance Benefit.

The benefits are limited by the following paragraph:

Benefit After Death of Insured

In the event of the Insured's death while the policy and this Benefit are in force in place of all other benefits hereunder, the Company will issue to the Insured's wife a paid-up term life insurance policy in the amount of $1,000 Sum Insured for each unit of this Benefit shown on page 3, which will expire on the policy anniversary following the Insured's wife's 65th birthday.

Upon the wife's death, the proceeds are to be paid according to the following paragraph:

Payment of Proceeds

Any proceeds payable under this Provision because of the death of the Insured's wife will be paid to the Insured, if living, otherwise to the estate of the Insured's wife, unless otherwise provided. The payee may elect to receive the commuted value of such monthly income in one sum. The commuted value shall be computed by discounting the monthly income payable at 3% interest, compounded annually.

The administrators argue that these paragraphs are ambiguous and, thus, under well-established principles [*see, e.g., Liverpool & London & Globe Ins. Co. v. Kearney*, 180 U.S. 132, 136 (1901); *Pacific Mut. Life Ins. Co. v. Young*, 40 Ariz. 1, 10, 9 P.2d 188, 191 (1932)] we are required to construe the language against the Company and in favor of insurance coverage. As ambiguities, they point to the fact that the caption does not condition the payment of the monthly benefit upon the survival of the husband, that the benefit is payable in addition to any amounts otherwise payable under the policy, that the payee may be the wife's estate if the insured is not living (indicating that the Company contemplated that the husband might predecease the wife) and that

the policy does not provide that the death of the insured prior to the death of the wife is one of the conditions which terminates the benefit.

Although we concede that the policy should have been drafted with more clarity and that the Wife's Benefit Rider may be difficult to understand, when it is viewed as part of a package providing insurance protection for the whole family, the paragraphs are not ambiguous. Under the Husband's Policy, the wage-earner's life was insured to protect the other members of the family in the event of his death. Under that policy the Company agreed to pay to the wife, upon proof of the husband's death, a lump sum plus a monthly income until the end of the period when the children would normally be expected to have become independent. Thus, the wife was protected with a lump sum to cover burial and other immediate expenses and with a monthly income during the years she would have been responsible for the young children.

Under the Children's Benefit Rider the Company agreed to pay the husband, upon proof of a child's death, a lump sum, thus protecting the family from death and burial expenses. Under the Wife's Benefit Rider the Company agreed to pay the husband, upon proof of the wife's death, a lump sum, protecting against burial and death expenses, plus a monthly income until the time when the wife would have reached age 50. Thus, the husband was assured that in the event of his wife's death he would have been able to continue to work and also would have been able to hire a housekeeper and to provide for child care until the children would have become independent. The monthly income coverage, however, was conditioned upon the husband surviving the wife. This is logical since if the husband had predeceased the wife, the children would have received the benefit from the monthly income under the husband's policy. An additional monthly income under the Wife's Benefit Rider would have been double protection. Thus, if the husband had predeceased the wife, the Company under the alternative coverage of the Wife's Benefit Rider would have issued her a paid-up term policy to pay a lump sum at her death, which could have been used for death and burial expenses. The paid-up term life would have expired when she would have reached age 65.

The language of the Wife's Benefit Rider, when viewed in this light, is not ambiguous. Although the caption does not contain any conditions, the first sentence of the first paragraph provides that the Company shall pay the benefits "subject to the terms and conditions of this Provision [the Wife's Benefit Rider] and the policy . . . ." One of the conditions is that if the husband predeceases the wife, the Company will issue "in place of all other benefits hereunder" a paid-up term life insurance policy for a lump sum. Consistent with this condition, the paragraph providing for the payment of the proceeds provides that if the husband has predeceased the wife, the proceeds, which would then be only the lump sum, shall be paid to the estate of the wife. It is only natural that the Company would contemplate the prior death of the husband and provide both for a reduction in coverage and for a contingent beneficiary; but that does not make ambiguous the paragraph which reduces the coverage by terminating the monthly income benefit. The clause making the benefit under the Wife's Benefit Rider payable in addition to the other benefits under the policy can reasonably refer only to the benefits under the Husband's Policy and the Children's Benefit Rider. Finally, the policy does not provide that the death of the husband prior to the wife's death terminates the benefit because his prior death only alters the scope of the wife's coverage; it does not completely terminate the benefit. We hold that, when viewed as part of a family insurance package, the Wife's Benefit Rider is not ambiguous.

The ambiguity in this case arises only because of the lack of evidence concerning the order of death. The policy does not provide for this contingency; but an Arizona statute does and the parties must be presumed to have contracted with knowledge of the existing statutes. *Broenen v. Beaunit Corp.*, 440 F.2d 1244, 1249 (7th Cir. 1970); *In re Clise's Estates*, 64 Wash.2d 320, 322, 391 P.2d 547, 549 (1964). Arizona Revised Statute § 20-1127 reads:[1]

[1]Ariz. Rev. Stat. § 14-2808, dealing with the succession of estates, is similar to section 20-1127:

> Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary,

> Where the individual insured or the annuitant and the beneficiary designated in a life insurance policy or policy insuring against accidental death or in an annuity contract have died and there is not sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy or contract shall be distributed as if the insured or annuitant had survived the beneficiary, unless otherwise specifically provided in the policy or contract.

The Company argues that under this statute Beverly, as the person insured under the Wife's Benefit Rider, must be presumed to have survived her husband, the beneficiary. Thus, the Company argues, at the presumed moment of the wife's death only the reduced benefit was in effect and the Company is liable only for $3,000.

The administrators answer by arguing first that the terms of the statute must be given the same meaning as the terms of the policy. Accordingly, they argue, that since Moris is defined as the "insured" in the Husband's Policy and since he is referred to as the "insured" in the Wife's Benefit Rider, he must also be deemed to be the "insured" under the statute. Thus, the administrators conclude that the husband should be presumed to have died last, entitling the estate to the commuted value of the monthly income.

This argument is spurious. The terms of the statute must be given their usual meaning, unless they are specifically defined otherwise within the statute. *Malat v. Riddell*, 383 U.S. 569, 571 (1966). The term "insured" as used in the statute can only refer to the person whose death triggers the Company's liability for the benefits provided by the policy. *See In re Clise's Estates*, 64 Wash.2d at 323, 391 P.2d at 549. Under the Wife's Benefit Rider this person was Beverly.

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but if the policy is community property of the insured and his spouse and there is no alternative beneficiary, or no alternative beneficiary except the estate or personal representatives of the insured, the proceeds shall be distributed as community property under [section 14-2807].

Since the issue in this case deals primarily with a question of insurance rather than succession, we have applied section 20-1127.

The administrators next argue that section 20-1127 does not apply in this case, thus creating an ambiguity that must be resolved in favor of coverage. They reason that the purpose of the simultaneous death act is only to control the distribution of insurance proceeds over the Company's liability has been established, not to aid in determining whether the company is liable in the first instance. They have not cited any authority for this position.

Although there is some merit to their argument, we do not believe we can adopt it primarily because we have already elected to apply a similar simultaneous death act in determining whether a decedent owned, at the time of her death, a property interest in a policy on her husband's life. In *Estate of Chown v. Commissioner*, 428 F.2d 1395 (9th Cir. 1970), we held that a life insurance policy owned by a wife on the life of her husband must be valued for estate tax purposes according to a theory that uses the life expectancy of a man of the husband's age (interpolated terminal reserve value) without consideration of the fact that there was no evidence that the husband died otherwise than simultaneously with the wife. In order to reach the question of valuation we had to conclude that the wife at the time of her death held sufficient incidents of ownership to require that the policy be included in her gross estate.[2] If the husband had predeceased her or had died simultaneously with her, she would not have held any of the required incidents of ownership since her right to change the beneficiary, to surrender the policy, to borrow on it or to assign it would have been extinguished at the death of the insured. *Estate of Wien v. Commissioner*, 441 F.2d 32, 35 (5th Cir. 1971). In assuming that Mrs. Chown held the required incidents of ownership, we relied upon the Oregon Uniform Simultaneous Death Act[3] under which, for purposes of distributing the proceeds, the beneficiary is presumed to have predeceased the insured. Thus, we held that the insurance policy had to be valued

[2]Int. Rev. Code of 1954, § 2042.

[3]The statute involved in *Chown* provided:

> Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

428 F.2d at 1396.

as if the wife had preceded the husband in death. 428 F.2d at 1397.

Three other circuits, also relying upon simultaneous death acts, have reached this same conclusion. *Estate of Wien v. Commissioner*, 441 F.2d 32 (5th Cir. 1971); *Estate of Meltzer v. Commissioner*, 439 F.2d 798 (4th Cir. 1971); *Old Kent Bank & Trust Co. v. United States*, 430 F.2d 392 (6th Cir. 1970). In *Estate of Wien v. Commissioner*, the Fifth Circuit, after reviewing the purpose of the simultaneous death act, stated:

> Consequently, Ellen, as the owner-beneficiary of the policies on Sidney's life, is treated for property purposes as if Sidney still survived at the instant of her death. Since it is Sidney's death alone which could have caused the extinguishment of Ellen's ownership rights, it is clear that under state law Ellen's ownership rights were intact and in her estate at the moment of her death.

441 F.2d at 36. The court explained that in determining questions of ownership of property for purposes of taxation it must apply state law and stated:

> Applying these principles to the instant case we conclude that Ellen, as the owner-beneficiary of policies insuring Sidney's life, had under Georgia law at the time of her death an ownership interest which was a valuable property right, and that the value of this interest must be included in her estate under § 2033.

441 F.2d at 37. In *Wien*, the Fifth Circuit did expressly what we did implicitly in *Chown;* it relied upon the simultaneous death act to conclude that the decedent had an ownership interest in the insurance policy at the time of death.

We recognize that under the simultaneous death act the insured is not presumed to have survived the beneficiary for all purposes, but only that the proceeds of the policy shall be distributed as if the insured had survived the beneficiary. Indeed, in *Wien* the Fifth Circuit stated that "the application of that act is not tantamount to a finding that the parties in fact died simultaneously. Rather, the application of the act . . . simply makes the actual order of death irrelevant and mandates that the property be dis-

posed of as if the insured survived the beneficiary." 441 F.2d at 39. But if we were to construe the act to be applicable only once the insurance company's liability is established, we would have to ignore the fact that we and the other circuits have relied upon the act for determinations other than the distribution of proceeds. To do so, we would need to carve out an artificial exception to a well-recognized statutory interpretation. This we are not justified in doing. In addition, by so limiting the application of the act we would limit its usefulness in resolving problems of construction when the parties fail to anticipate such contingencies in advance.

We conclude, therefore, that the Wife's Benefit Rider must be construed as if Moris had predeceased Beverly, thus reducing her coverage to include only a paid-up term life policy for a lump sum of $3,000.

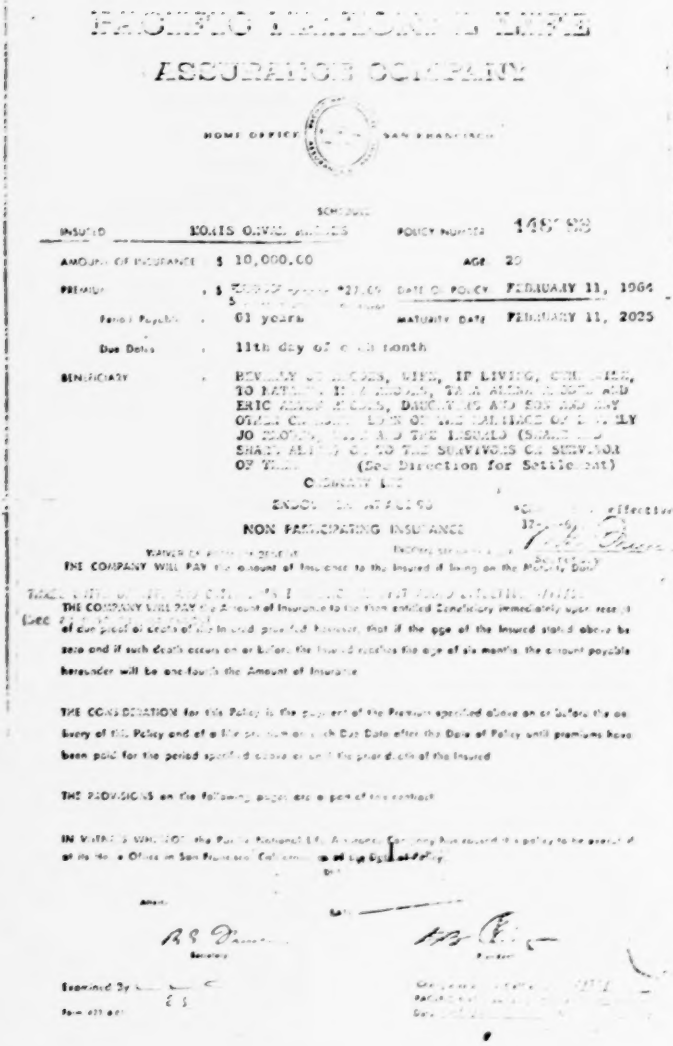
REVERSED.

GOODWIN, Circuit Judge, specially concurring:

I agree with the reasoning, and concur in the opinion of the court. But I devoutly hope that this court's ability, after much study, to make some sense out of the mindless draftsmanship we found here will not be interpreted by the insurance industry as "approval" of the contract language which caused all this mischief.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO 7-8-74—480

Appendix 2



PACIFIC MUTUAL LIFE
ASSURANCE COMPANY
HOME OFFICE SAN FRANCISCO

SCHEDULE

INSURED LOUIS OLIVAS POLICY NUMBER 148[illegible]

AMOUNT OF INSURANCE $ 10,000.00 AGE 20

PREMIUM $ [illegible] DATE OF POLICY FEBRUARY 11, 1964

Period Payable . 61 years MATURITY DATE FEBRUARY 11, 2025

Due Dates . 11th day of each month

BENEFICIARY . REVOCABLY TO MRS. LOUIS OLIVAS, WIFE, IF LIVING, OTHERWISE, TO RAFAEL H. OLIVAS, SON, AND ALICIA M. SOTO, AND ERIC ALBERT OLIVAS, DAUGHTERS AND SON AND ANY OTHER CHILDREN BORN OF THE MARRIAGE OF THE INSURED JO ELOISE OLIVAS AND THE INSURED (SHARE AND SHARE ALIKE) OR TO THE SURVIVORS OF SUCH OF THEM (See Direction for Settlement)

COMPANY'S

ENDORSEMENTS effective

NON PARTICIPATING INSURANCE

WAIVER OF PREMIUM DISABILITY INCOME BENEFIT

THE COMPANY WILL PAY the amount of Insurance to the Insured if living on the Maturity Date

THE COMPANY WILL PAY the Amount of Insurance to the then entitled Beneficiary immediately upon receipt (see [illegible]) of due proof of death of the Insured prior to that date, that if the age of the Insured stated above be zero and if such death occurs on or before the Insured reaches the age of six months the amount payable hereunder will be one fourth the Amount of Insurance

THE CONSIDERATION for this Policy is the payment of the Premium specified above on or before the delivery of this Policy and of a like premium on each Due Date after the Date of Policy until premiums have been paid for the period specified above or until the prior death of the Insured

THE PROVISIONS on the following pages are a part of this contract

IN WITNESS WHEREOF the Pacific Mutual Life Assurance Company has caused this policy to be executed at its Home Office in San Francisco, California as of the Date of Policy

Attest:

[illegible]
Secretary

[illegible]
President

Examined By [illegible]

Form 61 001

[illegible]
PACIFIC MUTUAL LIFE ASSURANCE COMPANY

THE CONTRACT. This policy, the application therefor, a copy of which is attached hereto and made a part hereof, and the endorsements hereon, constitute the entire contract between the parties. All statements made by the Insured in the application for this policy, in the absence of fraud, are deemed representations and not warranties, and no such statement shall avoid this Policy or be used in defense of a claim hereunder unless it is contained in the application. No alteration of this Policy and no waiver of any of its provisions shall be valid unless made in writing by the Company and signed by an officer of the Company.

CONTROL OF POLICY. During the lifetime of the Insured the right to exercise all privileges under this Policy, and to agree with the Company as to any changes in or amendments to this Policy, shall vest exclusively in the Insured, subject to the interests of the Beneficiary hereunder, except that if the Insured has designated an irrevocable Beneficiary, the consent of such Beneficiary shall be necessary to any such exercise, agreement, change or amendment. If the Insured is survived by a Beneficiary, the rights of the Insured hereunder shall vest in the Beneficiary as of the date of the Insured's death.

INCONTESTABILITY. This Policy shall be incontestable after it has been in force during the lifetime of the Insured for a period of two years from the Date of Policy, except for non-payment of premiums and except for any grace period granted. This provision shall not apply in the event of total disability, as hereinafter provided.

PREMIUM PAYMENTS. Except as hereinafter provided, all premiums on this Policy are hereby acknowledged. All premiums after the first premium shall be payable in advance either at the Home Office of the Company in San Francisco, California, or to an agent of the Company, upon delivery of a receipt signed by the President or Secretary of the Company and countersigned by such agent. If any premium is not paid on or before such premium date or within the grace period, as hereinafter provided, this Policy shall lapse as of the date to which premiums have been paid and all rights hereunder shall cease, except as to such extended insurance as may be granted.

ONE PREMIUM POLICY. If this Policy is a one premium policy, it may be surrendered to the Company at any time for a cash surrender value as provided in the table of cash surrender values set forth in this Policy. Upon surrender of this Policy, the Company shall pay the cash surrender value to the Insured or to the Beneficiary, as provided in the Policy.

If the premium for the whole or any part of a policy year in which the death of the Insured occurs has been paid for any period beyond the end of the policy year in which such death occurs, the Company shall pay to the Beneficiary the portion of such premium applicable to such period.

GRACE PERIOD. A grace period of thirty one days, without interest, will be allowed for the payment of any premium due after the first during which period the Policy will continue in force. If the Insured dies in said period the unpaid premium shall be deducted from the amount payable hereunder.

REINSTATEMENT. If this Policy lapses because of non-payment of premium and shall not have been surrendered for its cash surrender value, it may be reinstated at any time within five years after default in premiums, except upon presentation of evidence of insurability satisfactory to the Company, payment of all unpaid due premiums and payment or reinstatement of any policy loan which existed at the date of such default, with interest on such premiums from their respective Due Dates and on such loan to date of reinstatement at the rate of 5½% per year, compounded annually.

CHANGE OF PLAN. On any policy anniversary date while no premium is in default, this Policy may be exchanged without evidence of insurability for any participating form of policy which was currently issued by the Company on the Date of Policy on which premiums will be payable for at least the same length of time from the date of exchange as did the premiums for the policy surrendered for exchange, exclusive of premiums for additional benefits granted by riders. If any attached hereto. Such policy shall be

[illegible] the difference between the premium which would have been payable at the Policy Date for the plan of insurance then issued and the premium for the plan surrendered, computed on the basis of the Company's rates in force on the Policy Date of the Policy surrendered, plus the sum of any policy loan against the Policy surrendered and any unpaid loan interest thereon.

(2) The difference between the cash values of the new and the old policies for the number of years paid on the old policy, increased by 5½% of such difference.

The new policy will be issued on the basis of the same mortality and premium classification as the Policy surrendered. The new policy will be subject to the same [illegible] and will contain all of the same provisions, except as to additional benefits in event of death by accident or otherwise. If any such benefits are included in the Policy, there shall be payable with respect to the new policy the premiums applicable to the correct age.

MISSTATEMENT OF AGE. If the age of the Insured has been misstated, any amount payable or benefit which would be purchased by such premium paid would have purchased at the correct age.

SUICIDE. If the Insured shall commit suicide while sane or insane within two years from the beginning of the first policy year hereof, the liability of the Company under this Policy shall be limited to the premiums actually paid hereon, less any indebtedness.

CHANGE OF BENEFICIARY. While this Policy is in force, if the right to change the Beneficiary has been reserved, the Insured may from time to time change the Beneficiary by filing at the Home Office of the Company in San Francisco, California, a written request for such change. If the Company is to issue a new policy, the surrender of this Policy may be required. Each change of Beneficiary must refer specifically to this Policy. A change of Beneficiary may be made in the application for this Policy. No change of Beneficiary shall be binding upon the Company until it is recorded at the Home Office. The Company may accept and act upon any such change of Beneficiary that it believes to be genuine and to have been executed by the proper party hereto, and the Company shall not be responsible for the validity of any such change or for the sufficiency of the terms thereof or for the effect upon the rights of the Insured or the Beneficiary of the payment of any benefit or the exercise of any other right under this Policy made prior to the recording of such change. The written consent of such Beneficiary shall be necessary to any reinstatement or change of Beneficiary.

If there be more than one Beneficiary, whether revocably or irrevocably designated, the interest of any Beneficiary who predeceases the Insured shall pass to the survivor or survivors unless otherwise directed by the Insured in writing and so endorsed by the Company on this Policy. If no designated Beneficiary survives the Insured and if not otherwise provided, the proceeds of this Policy shall be payable in one sum to the executors, administrators or assigns of the Insured.

SETTLEMENT AND INDEBTEDNESS. Any sums payable by the Company under this Policy shall be payable at the Home Office in San Francisco, California. Any indebtedness to the Company on account of this Policy shall be deducted in any settlement hereunder. The Company may defer the granting of a cash surrender value or of a loan, except a loan for payment of premiums to itself, for the period provided by law [illegible] six months after receipt of the application therefor.

PAYMENT. The surrender value on this policy shall not be less than the amount payable according to the Commissioners Reserve Valuation Method. The interest and net single premium used to derive such basis is based on the Commissioners 1941 Standard Ordinary Table of Mortality with interest at the rate of 3½% per annum and the Policy Anniversary on which the Surrender Charge is, as shown below, the table of non-forfeiture values are at the rate of 2½% thereafter.

ASSIGNMENT. No assignment of this Policy shall be binding upon the Company until a copy thereof is filed with the Company at its Home Office in San Francisco, California. The Company shall not be responsible for the validity of any assignment and may assume that a[illegible] is subject to prior assignments not filed at the

in Event of

TOTAL AND PERMANENT DISABILITY

Upon receipt at the Home Office in San Francisco, California, in accordance with the conditions herein after stated, of written notice of claim of disability and due proof that the insured has become totally and permanently disabled by bodily injury or disease original ing after the effective date of this rider, and as defined herein, the Company will waive the payment of all premiums falling due under the policy after the commencement and during the continuance of such total and permanent disability, provided, however, that no premium shall be waived the due date of which is more than six months prior to the date of receipt at the Home Office in San Francisco, California, of written notice and proof of claim hereunder. The amount payable under any settlement will not be reduced by any premiums waived under this rider and the dividend, if any, and nonforfeiture values, if any, will be the same as if the premiums so waived had been paid in cash.

Consideration — The annual premium for this rider, or the corresponding semi-annual, quarterly or monthly premium, as the case may be, is included in the premium stated on the face of the policy and is payable at the times and in the manner there specified. Any premium on the policy falling due on or after the termination of this rider shall automatically be reduced by the premium for this rider.

Definition of Total and Permanent Disability — Disability shall be deemed to be total when the insured is prevented thereby from engaging in any occupation or from performing any work for compensation or profit. Such total disability shall be presumed to be permanent (but only for the purpose of determining the commencement of liability hereunder) when it is present and has existed continuously as above set forth for not less than four consecutive months. Without prejudice to any other cause of disability, the entire and irrecoverable loss of the sight of both eyes or the total and permanent loss by removal or disease of the use of both hands or both feet or of one hand and one foot shall be considered as total and permanent disability within the meaning hereof.

Notice and Proof of Claim — Written notice of claim and due proof of total and permanent disability of the insured must be presented to the Company at its Home Office in San Francisco, California, (a) while the insured is living and during the continuance of total and permanent disability, and (b) before the policy anniversary on which the age of the insured at nearest birthday is sixty if a male life or fifty-five if a female life, provided, however, that failure to give such notice and proof within such times shall not invalidate any such claim if it shall be shown that such notice and proof were given as soon as was reasonably possible. In case any premium on the policy is in default before receipt at the Home Office in San Francisco, California, of written notice and due proof of claim hereunder, disability benefits shall be allowed only if such notice and proof are received within one year of the due date of the first premium in default and if the total disability for which claim is made commenced prior to the due date of such first premium in default or subsequent to the due date of such first premium in default but within the grace period allowed by the policy for payment of such premium. In either event, no premium shall be waived the due date of which is more than six months prior to receipt of such notice and proof and the Owner shall be liable for any premiums in default before such six months period, with interest at 5½% per annum.

As a condition precedent to approval of claim the Company shall have the right and opportunity to have one or more physicians designated by it examine the insured when and so often as it may reasonably require.

Proof of Continuance of Disability and Recovery from Disability — Even though proof of disability has been accepted by the Company as satisfactory, the Company at any time may require due proof of the continuance of such disability and may require the insured to submit to an examination by one or more physicians designated by the Company, however, after such disability shall have continued for two full years, the Company will not require such proof or examination more often than once in each subsequent year. If, on request, such proof is not furnished or the insured fails to submit to such an examination or if the insured so far recovers as to be able to engage in any occupation or to perform any work for compensation or profit, then all waiver of premium benefits shall cease and all premiums thereafter falling due must be paid as originally provided in the policy. The Owner agrees to give immediate notice to the Company if and when the insured recovers from such disability.

Exclusions — The disability benefits provided herein shall not be granted if the disability results (1) from intentional self inflicted injury, (2) from any act directly or indirectly due to war, declared or undeclared, or (3) from military, naval or air service for any country at war, declared or undeclared.

Contestability — In accordance with the exception set forth in the incontestable clause of the policy, the Company may contest liability under this rider at any time and for any cause, inclusive of causes relating to the validity of the policy as a contract at its inception.

Termination — The disability rider shall terminate (a) on the policy anniversary on or next the age of the insured at nearest birthday is sixty if a male life or fifty-five if a female life or (b) when any premium on the rider or on the policy to which it is attached is not paid when due or within the days of grace for payment of such premium, or it may be terminated on the due date of any premium on the policy by written request of the Owner accompanied by the policy for endorsement.

Effective Date — The effective date of this rider is the date of the policy to which it is attached.

THE PACIFIC NATIONAL LIFE ASSURANCE COMPANY

Secretary

President

Form WP 6 61

INCOME SECURITY

ATTACHED TO AND MADE A PART OF POLICY NO. 1433855

Partially corrected effective 12-11-67.
Change made effective 12-11-67.

MONTHLY INCOME $ ~~444.00~~ $79.20

RIDER DATE FEBRUARY 11, 1964

TERMINATION DATE FEBRUARY 11, 1983

Secretary

In accordance with the provisions of this rider the Company will pay the monthly income benefit upon receipt of due proof of death of the insured occurring before the end of the income security period.

MONTHLY INCOME STARTS The Company will pay a monthly income commencing as of the date of death of the insured and payable on the same day of each month thereafter and terminating with the payment on the monthly payment date immediately before the end of the income protection period. The monthly income payable shall be the amount shown above.

INCOME SECURITY PERIOD The income security period shall begin on the rider date and end on the termination date hereof.

BENEFICIARY PROVISION As each payment of the monthly income becomes due it shall be made to the entitled beneficiary who is then entitled, under the provisions of the policy, to receive proceeds payable because of the death of the insured. If the entitled beneficiary under the provisions of the policy is not an individual receiving payment in his or her own right, the commuted value of the payments to become due to such beneficiary under this rider shall be paid in one sum.

ASSIGNMENT OF COMMUTATION No beneficiary shall have the right to assign or commute payments under this rider unless such right is given to such beneficiary in writing and recorded at the Head Operating Office of the Company.

PAYMENT TO CREDITORS If a creditor beneficiary or assignee has an interest in the proceeds payable under this rider, such interest shall be deducted from the commuted value and paid in one sum. Any remainder shall be applied to pay the monthly income until such remainder, with interest at 2½% compounded annually, shall be paid in full.

INCONTESTABILITY AND SUICIDE In applying the provisions of the policy relating to incontestability and suicide to this rider, the date of policy shall be the rider date.

AUTOMATIC TERMINATION This rider shall automatically terminate (1) if any premium remains unpaid after the end of the grace period, (2) if the policy is surrendered or continued under a non-forfeiture provision, if any, (3) if the policy becomes paid up or matures or terminates, or (4) at the end of the income security period.

PRIVILEGE OF CONTINUATION If this policy, exclusive of riders, provides term insurance which is converted this rider shall be continued as a part of the new policy.

CONVERSION PRIVILEGE Upon written request made while this rider is in force, this rider may be converted without evidence of insurability to any plan of age participating whole life or endowment insurance of the same mortality classification as this rider written by the Company on the date of the new policy. The premium for the new policy shall be based on the premium rate in use by the Company for the plan selected and for the age nearest birthday of the insured at the date of the new policy. Evidence of insurability of the insured satisfactory to the Company must be submitted before any disability benefits applying to this rider shall be included as a part of the new policy.

Conversion As of Rider Date On request of the owner the new policy may be dated as of the rider date if the conversion privilege is exercised within 5 years from that date. The amount of insurance under the new policy must not be less than the minimum required by the Company for the plan selected, nor greater than the commuted value of the remaining monthly income of this rider at the date of conversion. The conversion shall be subject to payment to the Company in cash of the reserve of the new policy at the date of conversion increased by 5½%.

Conversion At Attained Age At any time prior to the insured having attained age 65, nearest birthday, and while this rider is in force it may be exchanged for a new policy dated as of the date of conversion. The amount of insurance of the new policy must not be less than the minimum required by the Company for the plan selected nor greater than the commuted value of the remaining monthly income of this rider at the date of conversion.

COMMUTED VALUE The term "commuted value" as used in this rider shall mean the present value of the monthly income thereafter payable computed by discounting such income with interest at 2½% compounded annually. The following table shows the commuted value for each $10 per month of monthly income remaining to be paid for the number of policy years and months shown.

Yrs	Months											
	0	1	2	3	4	5	6	7	8	9	10	11
*35	2815	—	—	—	—	—	—	—	—	—	—	—
34	2764	2768	2772	2777	2781	2785	2789	2794	2798	2802	2806	2811
33	2711	2716	2720	2724	2729	2733	2738	2742	2746	2751	2755	2759
32	2657	2662	2666	2671	2675	2680	2684	2689	2692	2698	2703	2707
31	2602	2607	2611	2616	2621	2625	2630	2634	2639	2644	2648	2653
30	2546	2550	2555	2560	2565	2569	2574	2579	2583	2588	2593	2597
29	2488	2492	2497	2502	2507	2512	2517	2522	2526	2531	2536	2541
28	2428	2433	2438	2443	2448	2453	2458	2463	2468	2473	2478	2483
27	2367	2372	2377	2383	2388	2393	2398	2403	2408	2413	2418	2423
26	2305	2310	2315	2321	2326	2331	2336	2341	2347	2352	2357	2362
25	2241	2246	2251	2257	2262	2268	2273	2278	2284	2289	2294	2299
24	2175	2181	2186	2192	2197	2203	2208	2214	2219	2225	2230	2235
23	2108	2114	2119	2125	2131	2136	2142	2147	2153	2159	2164	2170
22	2039	2045	2051	2056	2062	2068	2074	2079	2085	2091	2097	2102
21	1968	1974	1980	1986	1992	1998	2004	2010	2016	2021	2027	2033
20	1896	1902	1908	1914	1920	1926	1932	1938	1944	1950	1956	1962
19	1822	1828	1834	1840	1847	1853	1859	1865	1871	1878	1884	1890
18	1746	1752	1758	1765	1771	1778	1784	1790	1797	1803	1809	1815
17	1668	1674	1681	1687	1694	1700	1707	1713	1720	1726	1733	1739
16	1588	1594	1601	1608	1615	1621	1628	1635	1641	1648	1655	1661
15	1506	1513	1520	1527	1533	1540	1547	1554	1561	1567	1574	1581
14	1422	1429	1436	1443	1450	1457	1464	1471	1478	1485	1492	1499
13	1336	1343	1350	1357	1365	1372	1379	1386	1393	1401	1408	1415
12	1248	1255	1262	1270	1277	1285	1292	1299	1307	1314	1321	1328
11	1157	1165	1172	1180	1188	1195	1203	1210	1218	1225	1233	1240
10	1064	1072	1080	1088	1096	1103	1111	1119	1126	1134	1142	1149
9	969	977	985	993	1001	1009	1017	1025	1033	1041	1049	1057
8	873	880	888	897	905	913	921	929	937	945	953	961
7	773	781	789	797	806	814	822	831	839	847	856	864
6	670	679	687	696	704	713	721	730	738	747	755	764
5	565	574	583	591	600	609	618	627	635	644	653	661
4	458	467	476	485	494	503	512	521	529	538	547	556
3	347	357	366	375	384	394	403	412	421	430	439	448
2	234	244	253	263	272	282	291	301	310	319	329	338
1	119	128	138	148	158	167	177	187	196	206	215	225
0	—	10	20	30	40	50	60	70	79	89	99	109

*Commuted values for longer periods will be furnished upon request

CANCELLATION Upon written request by the owner of the policy, this rider may be cancelled on any premium due date

NON PARTICIPATING This rider does not participate in the profits or surplus of the Company

CONSIDERATION This rider is issued in consideration of the application for this rider, a copy of which is attached to the policy, and payment of the charge for this rider. The charge for this rider is included in the premium stated on the face of the policy and is payable under the same conditions, except that such charge shall cease to be payable whenever this rider terminates

Signed for the Company at its Home Office as of the rider date

ATTEST

Secretary

President

Direction for Settlement

To be attached to and made a part of Policy No [illegible]

on the life of HORIS OSVAL [illegible] **, the Insured**

PACIFIC NATIONAL LIFE ASSURANCE COMPANY, hereinafter called the Company, is hereby requested to pay any proceeds due under the provisions of the above Policy on the Settlement Date to the beneficiaries designated below in accordance with and subject to the provisions (including the general Settlement Provisions) of this Direction for Settlement and the Policy. All powers herein granted, obligations and discretions for settlement under the Policy are vested, and the right to exercise them is reserved, by the said Company to make further changes in such designations and directions from time to time during the life of the Insured without the consent of any beneficiary, subject to the terms of the Policy. Unless otherwise indicated below, the terms "Proceeds" and "Settlement Date" shall be as defined in the General Settlement Provisions.

Beneficiary Schedule

Classes of Beneficiaries in order of Priority	Designation of Beneficiary		Date of Birth		
	Name	Relationship	Day	Month	Year
Primary Beneficiary	BEVERLY JO [illegible]	WIFE	6	MARCH	1937
Contingent Beneficiary	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	[illegible]	DAUGHTER	13	JULY	1962
	ERIC [illegible]	SON	18	SEPT.	1963
	AND ANY CHILD OR CHILDREN BORN OF THE MARRIAGE				
	(OTHER THAN TWINS ABOVE)				

Payment of Proceeds

The amount of the Proceeds is to be determined under the terms of the Policy and no provision of this Direction for Settlement shall be construed as an agreement to pay a greater amount. Subject to the terms of the Policy and the provisions hereof, the Proceeds shall be paid to the above designated beneficiaries as follows:

Primary Beneficiary: Proceeds to be held by the Company under Option 1, with interest payable each annually for a period of 20 years and then paid in one sum.

While the proceeds are held under Option 1, the beneficiary shall have the right of withdrawal and the right of Election of Other Options.

Contingent Beneficiary: In one sum.

GENERAL SETTLEMENT PROVISIONS

Article I. References and Definitions

(a) *Policy.* The term "Policy" as used herein means and includes collectively all of the policies listed by number on the Declaration for Settlement.

(b) *Proceeds.* The terms "Proceeds" as used herein mean the sums net amount payable on the Settlement Date under the policies and subject to the Divisions for Settlement. Whether or not by any date subsequent to the Settlement Date the terms "Proceeds" shall mean the then present value of any unpaid instalments which are uncommutable to be paid under the provisions of the Divisions for Settlement.

(c) *Settlement Date.* The term "Settlement Date" as used herein means the date of the first payment made under any one of the policies mentioned in the Declaration for Settlement.

(d) *Option.* The term "Option" as used herein means any of the settlement options set forth in the applicable Divisions for Settlement of the Policy; any person having a right to elect from time to time any of the Policy payment options is referred to as the "payee"; and the word "elect" or the word selected" as used herein in connection with the exercise of the payee's right to elect any of the applicable options shall include a change of election.

(e) *Commutation of Instalments.* The terms "commute" and "commutation" mean the "sale" or "purchase" by the Company of the right to receive any of the instalments payable under any option.

Article II. Beneficiaries and Priority

(a) *Priority of Payment.* Payments under the Settlement Provisions of this Policy shall be made to the beneficiaries in the order designated under the provisions of the Declaration for Settlement of this policy, or any change or changes of the same, or in the absence of such designation or change or changes, then to the beneficiaries of a prior class of beneficiaries.

(b) *Plural Beneficiaries.* If a class of beneficiaries (e.g. Primary Beneficiary, Contingent Beneficiary, etc.) consists of more than one person, the following shall apply with respect to payments of the proceeds of the Divisions for Settlement:

1. Each payment of Proceeds, whether a net sum or instalments payable under the terms of the Settlement Options, shall be made to the then living members of the class share and share alike.
2. If payment of the Proceeds is to be made to the members of a class "per capita and not per stirpes" and without representation, then on the death of the last surviving member of a prior class of beneficiaries, the Company, by the Proceeds shall be apportioned to the then living members of the class of beneficiaries entitled to receive payment, share and share alike and each member of such class shall be separately applied for his benefit under the Settlement Options. If the death of any such beneficiary shall occur prior to the receipt of a full share, the unpaid portion of such share of all to be apportioned to the other living members of the class of such beneficiary in the same manner, share and share alike and each member of such class shall be separately applied for his benefit under the Settlement Options. If the death of any such beneficiary shall occur prior to the receipt of a full share, the unpaid portion of such share of all to be apportioned to the other living members of the class of such beneficiary in the same manner, share and share alike and each member of such class shall be separately applied for his benefit under the Settlement Options. If the death of any such beneficiary shall occur prior to the receipt of a full share, the unpaid portion of such share of all to be apportioned to the other living members of the class of such beneficiary in the same manner, share and share alike and each member of such class shall be separately applied for his benefit under the Settlement Options.

(c) *Children.* Where the terms "Children" or "children" are used herein with reference to a class, all children, whether only brothers and sisters or living descendants of deceased children, shall not be considered members of such class unless otherwise indicated.

(d) *Children by Representation.* If the words "Children by Representation" or "per stirpes" are used herein with reference to a class of beneficiaries in the Declaration for Settlement, then on the death of any person entitled to receive any part of the said sum hereinbefore shall have the following effect. If a beneficiary (other than a child by representation of such child) is not living at a time when he or she would otherwise be entitled to payment hereunder, and if any child of his or hers is then living or has been living at the time of the death of such beneficiary, such child or children shall be entitled to receive the payment which such beneficiary would have been entitled to receive if living at the time of the death of the insured. If no child of such beneficiary is living at the time of the death of the insured, then the payment which such beneficiary would have been entitled to receive if living at the time of the death of the insured shall be paid to the children of such beneficiary who are living at the time of the death of the insured.

(e) *Relationship.* The terms "husband," "wife," "son," "daughter," "father," "mother," "brother," "sister," "grandchild," "grandparent," "nephew," "niece," "cousin," "uncle," "aunt," "son-in-law," "daughter-in-law," "father-in-law," "mother-in-law," "brother-in-law," "sister-in-law

(This form is to be used for Policy [illegible])

Policy No. 137501 RHODES

I (We) the undersigned, hereby amending (not) application to the PACIFIC NATIONAL LIFE ASSURANCE COMPANY, dated Dec 15 (Date of Application), 19 61 as follows

Plan of Policy — Sum Insured $

Original Policy Date — Annual Premium $

I (We) hereby apply for the Following

Plan of Policy applied for

Sum Insured $

Premium $

Date of changed Policy if other than Original Policy date

Commuted Value to be paid at the option of the primary or contingent beneficiary.

I (We) hereby agree that these changes shall be an amendment to and form part of the said application and of the policy issued thereunder, if any, and that they shall be binding on any person who shall have or claim any interest under such policy.

I (We) further agree that, if the policy is reissued, the contestable clause as described in such policy shall be effective commencing from the new policy date.

Dated at Phoenix, Arizona this 29 day of January, 19 62

Witness to Signature of Insured — Signature of Insured

Signature of Agent — Signature of Owner if other than the Insured

[illegible] of the insured

POLICY LOANS

CASH LOANS. After this Policy has a cash value, and while it is in force, except as extended term insurance under the non-forfeiture options, the Company will lend on the sole security and upon written assignment of this Policy, a sum not exceeding the cash value at the end of the current policy year as shown in the Table of Non-Forfeiture Values, less any existing indebtedness on account of this Policy and accrued interest thereon. There shall be deducted from the proceeds of such loan interest to the end of the current year and any unpaid premium for such year.

AUTOMATIC PREMIUM LOANS. Upon request made in the application or upon subsequent written request received by the Company at its Home Office in San Francisco, California, prior to the expiration of the grace period, and until a written revocation of such request has been received at the Home Office in San Francisco, California, any premium which remains unpaid at the end of the grace period will automatically be paid by a loan granted by the Company under the terms and conditions of this Policy. Loans granted. Provided, however, if the loan value then available is insufficient to cover the entire amount of any premium due when this provision would otherwise be operative, no automatic loan shall be made and the premium shall be in default.

INTEREST AND REPAYMENT. Interest shall be at the rate of 5½% a year, payable in advance; unpaid interest shall be added to the loan indebtedness and bear interest on the same basis. Any loan may be repaid in whole or in part to any Election of the Insured and prior to maturity of the Policy, provided that a loan which exists at expiration of the grace period may not thereafter be repaid unless this Policy be reinstated. Failure to repay any loan or to pay interest, shall not void the Policy unless the total indebtedness shall equal or exceed the loan value at the time of such failure nor until 31 days after notice shall have been mailed to the Insured and to any assignee of record at the Home Office in San Francisco, California, at their respective last known addresses.

NON-FORFEITURE VALUES

BASIS OF NON-FORFEITURE VALUES. The cash values on any policy anniversary are calculated by the Standard Non-Forfeiture Value Method. The non-forfeiture factors per $1000 of Amount of Insurance are, when required by law, on file with the Insurance Department of the State in which the Policy is delivered. All such calculations are based upon the Commissioner's 1941 Standard Ordinary Table of Mortality and an interest rate of 3½% until the "Policy Anniversary on Which Interest Rate Changes," as shown below the table of non-forfeiture values, and 3½% thereafter, provided, however, that in calculating extended term insurance and pure endowment, the rate of mortality used is 130% of the rates according to said table. These calculations are also based upon the assumption that deaths occur at the end of the policy year. The amount of paid-up insurance, the amount of pure endowment and the periods of extended term insurance are such as the corresponding cash values will provide at the then attained age, nearest birthday, of the Insured. The non-forfeiture values are no less than the minimum required by the State in which the Policy is delivered.

TABLE OF NON-FORFEITURE VALUES. Values given in the Table of Non-Forfeiture Values are for a policy free of indebtedness and for lapses occurring with premiums paid for completed policy years, proportionate allowance being made in determining values from said table for the fractional part of a policy year's premium that has been paid. Values for policy years beyond those shown in said table will be furnished upon request.

NON-FORFEITURE OPTIONS. Any one of the following non-forfeiture options, the values of which are stated in the Table of Non-Forfeiture Values, may be elected by written request received by the Company at its Home Office in San Francisco, California, not later than sixty days after the Due Date of any premium in default and prior to the death of the Insured.

Cash Value. The cash value of the Policy will be paid upon surrender of the Policy, or

Paid-up Insurance. This Policy will be continued from the Due Date of the premium in default for a reduced amount of paid-up insurance payable at the same time and subject to the same conditions as this Policy, or

Extended Term Insurance. The insurance hereunder will be continued as extended term insurance from the Due Date of the premium in default. The term insurance shall not extend beyond the Maturity Date of this Policy. If the value used to purchase extended term insurance is more than enough to continue this Policy to its Maturity Date, the excess shall be applied to purchase a pure endowment payable in any sum on the Maturity Date provided the Insured be then living.

Automatic Option. If no election is made within sixty days after the Due Date of a premium in default, the Policy will be automatically continued as extended term insurance.

If at the date of lapse the premiums have been paid to the end of the policy year for which a cash value is first shown in the Table of Non-Forfeiture Values or if this Policy shall have become paid up by completion of all premium payments, the paid up insurance or extended term insurance under which this Policy is continued may be surrendered at any time for an amount equal to the net single premium at the attained age of the Insured for the remaining benefits under such insurance, computed on the same mortality and interest assumptions as set forth above. Provided, however, that if the date of surrender is within the thirty day period immediately following a policy anniversary, such amount will not be less than the amount of net single premium on such policy anniversary.

EFFECT OF INDEBTEDNESS ON NON-FORFEITURE OPTIONS. Any indebtedness under this Policy shall be deducted from the cash surrender value otherwise payable and from the amount of insurance extended under the extended insurance option. The amount of paid up insurance and the term of extended insurance and amount of pure endowment, if any, shall be reduced to such as the cash surrender value less indebtedness will provide at the attained age of the Insured.

TABLE OF [illegible] SINGLE VALUES FOR EACH $1,000 AMOUNT OF INSURANCE

C. V., Paid Up Insurance and Pure . Commuted Values for an Amount of Insurance greater or less than $1000 will be proportionately increased or decreased. The periods of Extended Term Insurance will be the same for any Amount of Insurance. Age refers to age of Insured on the Date of Policy as shown on the face of the Policy. Pure endowment values, where available, appear in the column headed "Days" opposite or below the $ sign.

The "Age" below refers to age of ured on the date of Policy as shown on the face of the Policy. The "Policy Anniversary on Which Interest Rate Changes" is shown opposite the "Age."

Age	Policy Anniversary on Which Interest Rate Changes
15	30
16	30
17	29
18	29
19	28
20	28
21	27
22	27
23	26

Age	Policy Anniversary on Which Interest Rate Changes
24	26
25	25
26	25
27	25
28	25
29	25
30	25
31	25
32	25

Name of applicant: [illegible] Alexis Orion Rivera

Current address: 2410 W. 70th Place, Scottsdale, Arizona 85257

I hereby request a Certificate of Rehabilitation to Expunge My Conviction, with Hopes of Re-Joining Arizona Peace Officer Standards & Training, Pursuing Term to Be Certified by Arizona Police.

RESPONSE GUIDELINES

1. Answer the following questions by checking the appropriate boxes. If you answer "yes" to any question, you must explain your answer in detail on a separate sheet of paper.

a. Have you ever been convicted of a felony or misdemeanor?	☑ Yes	☐ No
b. Are you currently on probation?	☐ Yes	☑ No
c. Are you currently under indictment?	☐ Yes	☑ No
d. Are you currently charged with a crime?	☑ Yes	☐ No

If Yes, explain: Charged with Misdemeanor Theft & Public Nuisance Related to Representation for State Bar & Jury (Grand Jurors) 8/29/17

e. If married: (1) Was your spouse convicted of a felony?	N/A	☐ Yes ☐ No
(2) Is your spouse currently on probation?	N/A	☐ Yes ☐ No
f. Are you currently employed?		☐ Yes ☑ No

If Yes, explain:

g. Height: 6 ft — in. 135 lbs.

h. Have you ever used a name other than your present name? Yes No

If Yes, explain:

Name of Agency or Person to Contact	Address	Dates of Contact	Dates of Records	Reason for Contact
Police	Mesa Police Department	1977	24 hour Record	
	[illegible]			
	[illegible]			
	State Attorney General's Office			
	Phoenix Police Department			

I declare under penalty of perjury that the foregoing is true and correct. Executed on the date and at the location set forth below.

Date: December 28, 1967 X [illegible]

Edward O. Shields, CEO X [illegible]

Form 4 (07/15)

PACIFIC N IONAL LIFE ASSUR NCE CO
HOME OFFICE - SAN FRANCISCO, CALIF.

APPLICATION

To be used for conversion of term insurance, policies issued under a guaranteed insurability benefit, or other changes of plan not requiring evidence of insurability.

I hereby apply for the following:

Name: MORIS ORVAL RICOES

Address: 2612 N. 70th Place

Scottsdale, Arizona 85257

Age: 33

Plan of Policy applied for: Executive Whole Life with Waiver of Premium and Automatic Premium Lo
Remaining Term to be continued on Original Base Policy.

Sum Insured: $ 10,000

Annual Premium: $ 194.90

Policy date: December 31, 1967

Beneficiary: Same as Settlement Option in Policies

Dated at Phoenix, Arizona **This** 21st **day of** December **19** 67

Signature of Insured

Signature of Owner if other than the Insured

...ance with the Company at San Francisco, ...

SECRETARY

PRESIDENT

WIB

© 67 (1/68)

RECEIPT OF EARLY THE OFFICIAL Receipt of the ... upon the payment of the ... Option 3 of the ... option of a different plan, ... of the ... of the Home Office in San Francisco, California, ... Policy ...

WAIVER OF PREMIUM BENEFIT

FOR

ADDITIONAL INSURANCE GIVEN A PAID-UP POLICY AND PAYABLE AS A MONTHLY INCOME TO THE END OF THE PERIOD OR UPON ELECTION AS A SINGLE PAYMENT, IF THE INSURED'S WIFE'S DEATH OCCURS DURING THE PERIOD

The Company agrees, subject to the terms and conditions of this Provision and of the policy to which it is attached, to pay the full premium on the policy specified on page 3 of this Provision, which becomes due on the policy anniversary nearest the insured's 65th birthday, if the insured's wife named on page 3 of this Provision shall die before such anniversary and this Provision and the policy are in force.

1. For each month of October in the amount of $

   a. $1,000 payable monthly on one term

   b. If the wife has survived age 50, an monthly income of $50 beginning with the date of the insured's wife's death and payable at monthly intervals until the end of the month in which the insured's wife would have attained age 70

2. If a Children's Benefit is attached to the policy, a monthly income for each child as fully paid up term insurance to the child's 19th birthday.

The Date of Issue of this Provision, which is the date the Term Period begins, and the Term Period ends are as specified on page 3 of this Provision.

The Benefits of this Provision are payable in addition to any amounts which may be payable under the policy.

This Provision and any and all of the policy to which it is attached are subject to all of the provisions of the policy which are not inconsistent with or specifically modified by the provisions of this Provision, including those applicable to the Incontestability and Suicide provisions.

Whenever premiums are waived under the policy in accordance with a Disability Benefit Provision, premiums shall be waived under this Provision.

Payment of Proceeds

Any proceeds payable under this Provision on account of the death of the insured's wife shall be paid to the insured, if living, otherwise to the estate of the insured's wife, unless otherwise provided. The payee may elect to receive the commuted value of such monthly income in one sum. The commuted value shall be computed by discounting the monthly income payable at 3% interest, compounded annually.

Incontestability, Suicide, Reinstatement and Age

As applied to this Provision, the provisions in the policy relating to incontestability and suicide, premiums of the policy shall be measured from the date of issue of this Provision and shall apply to the insured's wife as well as the insured and the misstatement of age provision of the policy shall apply only to the insured's wife.

Exchange of Policy for a New Policy

This Provision may be exchanged as a part of any policy, or part of a term policy for which this policy is exchanged if

a. The date of issue of the new policy is the same as this policy or an anniversary of this policy, and

b. The new policy and the Provision are in the same premium class, and

c. Premiums under the new policy are payable at least to the end of the Term Period of this Provision, and

d. The Sum Insured of the new policy is the same as the policy

Reinstatement

Reinstatement of the policy while including this Provision will require the submission to the Home Office of evidence satisfactory to the Company of the insurability of the insured's wife covered under this Provision, in addition to the other requirements stated in the policy.

Benefits After Death of Insured

In the event of the [illegible] of which the policy and this Benefit are in force, in place of all other benefits under the Company will issue to the insured's wife a paid-up term life insurance policy in the amount of $1,000 from insured for each unit of this Benefit shown on page 3, which will expire on the policy anniversary following the insured's wife's 65th birthday.

Termination

This Provision will terminate without value, subject to the "Exchange of Policy for a New Policy" Provision, upon the earliest of

a. The lapse, exchange or termination of the policy, or

b. The payment or application of the surrender value of the policy, or

c. The due date of the premium next following receipt at the Company's Home Office of a request for termination, save by written notice and presentation of the policy for adjustment, or

d. The date the policy becomes fully paid up, or

e. The end of the Term Period

Signed for the Company at San Francisco, California

SECRETARY

PRESIDENT

WVP

G-87 (1/69)

ELECTION OF SINGLE SUM OPTION. Election of commutation of monthly income payments to be in writing, filed at the Home Office in San Francisco, California. An election [illegible] payable only under Option 3 or for the number of months for which payments remain to be payable under Option 4.

SUPREME COURT, U. S.

FILED

JAN 22

MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-721

ORVAL M. RHODES and WILLIAM A. GUFFEY,
as Co-Administrators of the Estates
of MORIS O. RHODES and BEVERLY RHODES,
Deceased.

Petitioners,

vs.

REPUBLIC NATIONAL LIFE INSURANCE COMPANY,
Respondent,

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ROBERT W. HOLLAND
CARSON MESSENGER ELLIOTT
LAUGHLIN & RAGAN
1400 United Bank Building
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Phoenix, Arizona 85012
Counsel for RESPONDENT

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IN THE

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No.....

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Petitioners,

vs.

REPUBLIC NATIONAL LIFE INSURANCE COMPANY,
Respondent,

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

OPINION BELOW

The sole reported opinion in this action is the decision of the Court of Appeals for the Ninth Circuit reported in 501 F.2d 1213, as stated by the petitioners.

JURISDICTION

Jurisdiction of this Court has been invoked by the petitioners under the provisions of 28 U.S.C. § 1254(1) (Petition, p. 2)

Jurisdiction was originally vested in the Federal Courts by the petitioners, as plaintiffs, filing a complaint in the United States District Court for the District of Arizona, alleging diversity of citizenship under 28 U.S.C. § 1332, and praying for declaratory judgment relief as authorized in 28 U.S.C. § 2201, et seq.

STATUTES INVOLVED

The respondent concurs in the correct statement of those statutes quoted by the petitioners at pages 2 through 5 of the Petition for Writ of Certiorari.

In addition to the authority cited by the petitioners, the following additional statutes are deemed relevant to the issues raised by the Petition for Writ of Certiorari:

28 U.S.C. Rules of the United States Supreme Court, Rule 19. *Considerations Governing Review on Certiorari.*

> "1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:
>
> . . . . .
>
> (b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision."

Arizona Revised Statutes § 25-211

Property acquired during marriage as community property; exceptions; disposition of personal property.

"A. All property acquired by either husband or wife during the marriage, except that which is acquired by gift, devise or descent, or earned by the wife and her minor children while she lives separate and apart from her husband, is the community property of the husband and wife. B. During coverture, personal property may be disposed of by the husband only."

28 U.S.C. Federal Rules of Civil Procedure

Rule 56. Summary Judgment.

". . .

(c) MOTION AND PROCEEDINGS THEREON. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answer to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."

References to Arizona Revised Statutes in this brief are abbreviated "A.R.S. § ....."

STATEMENT OF THE CASE

The Petitioners, Co-Administrators of the Estates of Moris O. Rhodes and Beverly J. Rhodes, Deceased, filed this action seeking declaratory judgment regarding the proper construction of a life insurance policy issued by Pacific National Life Assurance Company, the predecessor of the respondent Republic National Life Insurance Company. The insurer's answer admitted coverage but affirmatively alleged its liability to be $3,000, rather than the $26,625.30 claimed by decedants' administrators.

The case was submitted for determination by the District Court on petitioners' Motion for Summary Judgment. Following argument, judgment was entered for the decedants' administrators and against the respondent-insurer in the sum of $23,625.30.

The insurer, Republic National Life Insurance Company, appealed to the Court of Appeals for the Ninth Circuit. That Court reversed, as stated in the opinion included in the appendix to the Petition for Writ of Certiorari. (See Appendix, p. 1 infra.) The decedants' co-administrators then petitioned to this Court for Writ of Certiorari.

On February 11, 1964, one of the decedants, Moris O. Rhodes, entered into a contract of life insurance with Pacific National Life Assurance Company, the respondent's predecessor. Later, about April, 1965, that insurance policy was amended by addition of a rider entitled "Wife's Insurance Benefit." This policy was issued pursuant to an application submitted and signed by Beverly Jo Rhodes, wife of Moris O. Rhodes, which is annexed to the policy. A true and correct copy of the insurance policy is reproduced in the appendix. (A10-A29)

In a flash flood near Payson, Arizona, on September 5, 1970, Moris O. Rhodes and Beverly Jo Rhodes died, together with their children. There is no evidence from which to determine the order of their death.

Upon the filing of the claim for death benefits, the face amount of the original policy was duly paid to decedants' administrators. However, a dispute arose concerning the proper interpretation to be given to the "Wife's Insurance Benefit" rider which was added to the contract in 1965.

The decedants' administrators contended that this term insurance rider provided for payment of $26,625.30 upon the death of Beverly Jo Rhodes. Republic National Life Insurance Company contended that a contingency stated in the policy caused a reduction of policy proceeds to a net of $3,000 under the following clause:

"Benefit After Death Of Insured

In the event of the Insured's death while the policy and this Benefit are in force, in place of all other benefits hereunder, the Company will issue to the Insured's wife a paid-

up term life insurance policy in the amount of $1,000 Sum Insured for each unit of this Benefit shown on page 3, which will expire on the policy anniversary following the Insured's wife's 65th birthday."

No other facts are deemed material to the determination of the issues before this Court.

ARGUMENT

DO THE FACTS OF THE PETITION FOR WRIT OF CERTIORARI JUSTIFY REVIEW UNDER RULE 19 OF THIS COURT?

The questions presented by the petitioners in their brief seek only to further their quest for interpretation of a life insurance contract in the light of Arizona statutes pertaining to simultaneous death. The statutes upon which the petitioners base their arguments are wholly creatures of the Arizona Legislature. (Petition, pp. iii, 3, 4, 9 and 12)

The facts giving rise to the controversy are even more special and narrowly defined. Because of a flash flood an insured husband and wife, together with all of their children, were killed with no evidence to establish the order of death. (Petition, p. 8; p. 4 supra) The life insurance contract in controversy was composed of the husband's basic policy together with a term rider entitled "Wife's Insurance Benefit". The result of the Court of Appeal's interpretation of the policy reduces the petitioners' entitlement from the $26,625.30 claimed to the sum of $3,000.00 previously paid by the respondent Republic National Life Insurance Co. (501 F.2d 1213, 1214; p. 3-4 supra).

Therefore, the current Petition for Certiorari involves a highly unusual fact situation and an extremely localized precedent in law. Contrary to the petitioners' representation, it is difficult to conceive of these points as raising either "significant [or] recurring problems" in the field of insurance law. (Petition, p. 9, statement of Point 1).

None of these factors can be said to constitute special or

important reasons to justify the granting of a Writ of Certiorari. (Rule 19, para. 1.; Supreme Court of the United States) Further, no conflict on the issues presented exists among the circuits. The only case found dealing with this issue is *In Re Clise's Estates*, 64 Wash. 2d 320, 322, 391 P 2d 547, 549 (1964); cited 501 F.2d 1213, at 1216 (1974).

An additional justification for this Court's abstinence from deciding matters of State Law in the field of insurance arises from the legislative and judicial precedents bearing upon the *McCarran-Ferguson Act*, 15 U.S.C. §§ 1011-1015, (1945). Both Congress and this Court have spoken extensively of the purpose served by this enactment to assure that Federal involvement would be avoided except in instances of specific congressional enactment directed expressly to the business of insurance. 15 U.S.C. § 1011; *Prudential Insurance Co. v. Benjamin* 328 U.S. 408, 415, 66 S.Ct. 1142, 90 L.Ed. 1342 (1946). As pointed out in *Prudential Insurance Co. v. Benjamin* the purpose of the act was:

> " Obviously Congress's purpose was broadly to give support to the existing and future State systems for regulating and taxing the business of insurance. This was done in two ways. One was by removing obstructions which might be thought to flow from its own power, whether dormant or exercised, except as otherwise expressly provided in the Act itself or in future legislation. The other was by declaring expressly and affirmatively that continued State regulation and taxation of this business is within the public interest and that the business and all who engage in it 'shall be subject to' the laws of the several States in these respects."

It is therefore all but impossible to conceive of any purpose to be served by subjecting the points at issue to further review by this Court in any way which would not contravene both the controlling public policy of the *McCarran-Ferguson Act* and result in an unnecessary extension of the policy for review embodied in Rule 19.

PETITIONERS' POINT 1:

Should the Uniform Simultaneous Death Act be applied to

construe otherwise ambiguous language of a life insurance policy and thereby cause a forefeiture of the maximum proceeds payable upon the death of the insured.

COUNTERPOINT:

THE PETITION STATES NO SUPERVENING CONSIDERATIONS OF PUBLIC POLICY. NO FORFEITURE HAS OCCURRED.

The petitioners' statement of this issue is rich with implications of public policy. The arguments which they advance seek an emotional response by alluding to "premium trucks loaded with unpaid benefits" carting away money which must surely belong to someone else; or so the argument implies. (Petition, p. 12)

Such arguments simultaneously proceed from a premise which is really an unsupported conclusion, while ignoring the facts. There is no evidence of record to show any actuarial result either from the construction made by the Court of Appeals, or that contended for by petitioners.

Petitioners' appeal for invoking as a standard of interpretation "how a reasonable man might read those provisions" [of the contract] is wholly unjustified. (Petition p. 11) The case was decided in the District Court pursuant to petitioners' motion for summary judgment. Such a motion proceeds upon the moving parties' representation that no material facts are in issue about which reasonable minds may differ. 28 U.S.C. Rule 56(c).

Nor would such a standard be justified if the facts were in controversy. Where the only question before the Court is the interpretation of written instruments, only questions of law are presented and the document is subject to review in its entirety by the Appellate Court. *Sun Indemnity Company of New York v. American University*, 26 F.2d 556 (1928); *Columbia Casualty Co. v. Tibma*, 63 F.2d 538 (1933); *Crouch on Insurance* 2d § 15:3. Whether a contract of insurance is ambiguous is a question of law for the Court. *Stahl v. American National Assurance Co.* (Mo.App.) 70 S.W.2d 78.

Petitioners achieve nothing from arguing that the result of the litigation to this point is an unintended result as viewed from the position of the parties when the insurance contract was formulated. The wife's insurance benefit rider speaks only for two alternatives. One is "the death of the insured's wife"; the other is "the insured's death while the policy and this benefit are in force". (Appendix, p. A23) The decedents' purchase of an insurance contract with contingently variable benefits disproves any anticipation of a concern for the amount payable to the unidentified heirs of these estates following the unfortunate death of every person named in the insurance contract.

Although the petitioner does not identify the means by which any forfeiture was accomplished by the holding of the Court of Appeals, it is nevertheless stated in their statement of the question. This is misleading because it implies that vested rights were denied. Actually, the purpose of the litigation is to determine whether the petitioners are entitled to receive insurance proceeds which they have never had, and which the respondent-insurer has never acknowledged. The Court of Appeal's decision is, therefore, only a measure of the rights involved, and does not constitute any forfeiture whatsoever.

By approaching these issues in a cloud of emotion the petitioners have succeeded only in obscuring reason from themselves. It is clearly the last gasp of those who have presented their best arguments elsewhere, and been found wanting. It certainly presents no reason for further review.

PETITIONERS' POINT 2:

Should the Uniform Simultaneous Death Act be applied in a manner which determines the existence and amount of life insurance proceeds in an ambiguous life insurance contract upon the death of the insured as opposed to being utilized simply as a procedure or method of distribution of pre-existing or pre-determined life insurance proceeds.

COUNTERPOINT:

THE CIRCUIT COURT PROPERLY HELD THE INSURANCE CONTRACTS UNAMBIGUOUS, AND RELIED UPON STATUTE ONLY TO ESTABLISH THE PRESUMPTIVE ORDER OF DEATH.

Petitioners' statement of this issue misconstrues the plain and unmistakable holdings of the Court of Appeals. Because of the petitioners' desire to make use of a presumption against the insurer in resolving ambiguities it has led them to ignore the conclusion of the Court of Appeals that *there are no ambguities as to the sums payable under this insurance contract:*

> " . . . the paragraphs are not ambiguous." (Appendix, p. A4)
>
> " The language of the Wife's Benefit Rider, when viewed in this light, is not ambiguous." (Appendix, p. A5)
>
> " We hold that, when viewed as a part of the family insurance package, the Wife's Benefit Rider is not ambiguous." (Appendix, p. A5)
>
> " The ambiguity in this case arises only because of the lack of evidence concerning the order of death. The policy does not provide for this contingency; but an Arizona Statute does and the parties must be presumed to have contracted with knowledge of the existing statutes." *Broenen v. Beaunit Corp.*, 440 F.2d 1244, 1249 (7th Circuit, 1970); and *In Re Clise's Estates*, 64 Wash.2d 320, 322, 391 P.2d 547, 549 (1964). Arizona Revised Statute § 20-1127: [Text of Statute omitted; see text at Petition p. 4-5] (Appendix, p. A5)

Since petitioners must refute the central holding of the Circuit Court, it would be reasonable to anticipate a clear exposition of the points at which they conceive that the Circuit Court committed error. Apparently, the petitioners' claim to ambiguity rests solely upon restricting the reader to the single caption line quoted from the policy at page 10 of the petition, as distinguished from the thorough analysis of the entire policy which is so carefully stated by the Circuit Court.

Similarily, petitioners' argument that the Circuit Court's "use of

the simultaneous death act is contrary to any other decisions of that Court or other appellate courts", directly refutes their argument that the issues here present "a case of first impression which intensifies the dangerous impact of this decision." (Petition, pp. 12 and 9) Throughout proceedings in this litigation petitioners have shown no authority in point which is repugnant to the conclusions reached by the Circuit Court. Certainly they have shown none in their petition. It is doubtful that any litigation of this precise point has previously arisen, given both the format of the contract and the simultaneous death of an entire family.

By its decision, the Circuit Court has carefully examined every provision of the life insurance contract placed at issue by the parties. Their decision stands unrefuted by the petitioners and would gain nothing from summary by the respondent insurer. As clearly found by the Court of Appeals, the only recouse to statute which is necessary for the decision of this matter is merely to establish a presumption as to the sequence of death between the husband and wife whose lives were covered by this insurance contract. (Appendix, p. A5)

If A.R.S. § 20-1127 is not drafted for that purpose, then it is difficult to ascribe any other purpose to it. Petitioners have characterized A.R.S. § 20-1127 as "the Uniform Simultaneous Death Act". Even though the table of adoption appended to the Uniform Act does not acknowledge parentage of the Arizona Act, unquestionably the approach to the problem of simultaneous death between the two Acts is sufficiently parallel to merit a resort to the Uniform Law Commissioners' prefatory note to the Simultaneous Death Act for such instruction as it gives concerning the purpose for its enactment:

> " The theory of the present Act makes no effort whatever to resolve the unresoluble. The formula is a simple one and easily applied. The theory of the present Act is that as to the property of each person he is *presumed* to be the survivor and it is administered accordingly." (Uniform Simultaneous

Death Act, Commissioners' prefatory note, 9C U.L.A. at 158 [emphasis supplied]).

Therefore, the Act was created to establish a presumption. Reference to its Arizona counterpart in this case was only to utilize that presumption. Certainly no further review is necessary to reinforce this conclusion.

PETITIONERS' POINT 3:

Did the Court of Appeals for the Ninth Circuit by failing to harmonize the applicable simultaneous death statutes in the State of Arizona create a substantive presumption respecting the survival of the insured over the beneficiary which is contrary to the expressed language of other simultaneous death statutes in Arizona where no such presumption exists?

COUNTERPOINT:

LIFE INSURANCE PROCEEDS PAYABLE UPON THE DEATH OF A SPOUSE ARE NOT COMMUNITY PROPERTY; NOR CAN THE PROVISO OF ARIZONA REVISED STATUTES § 14-224 BE INVOKED BY PETITIONER WHERE THERE ARE CONTINGENT BENEFICIARIES TO THE INSURANCE CONTRACT.

Petitioners' argument proceeds on the implied but false premise that insurance proceeds payable upon the death of one spouse are community property. Under Arizona Law, however, community property is limited to that which is "acquired by either husband or wife during the marriage". (A.R.S. § 25-211, see p. 2, supra)

Therefore, death terminates the marital community, and insurance proceeds which exist only upon the death of one spouse cannot be community property. This has been expressly recognized in two community property jurisdictions. The Supreme Court of Washington states:

" Where the insured designates his wife as beneficiary of a policy of life insurance issued during the existence of the community even if the premiums on the policy are paid with

> funds of the community, the proceeds of the policy become upon the death of the insured the separate estate of the wife." *In Re Tovey's Estate*, 22 Wash.2d 212, 155 P.2d 273, 276 (1945).

Texas has reached the same conclusion in *Davis v. Magnolia Petroleum Co.*, 134 Tex. 201, 134 S.W.2d 1042 (1940).

Reliance upon Washington authority in the absence of similar direct decisions in Arizona is specifically authorized as the prevailing rule of interpretation by the Supreme Court of Arizona:

> " It will readily be seen that we have placed ourselves squarely in accord with the view prevailing in the state of Washington, and this is but natural, for our statutes on this subject are more analagous to those of that state than to any other." *Cooper v. The Valley Bank*, 28 Ariz. 373, 379, 237 P. 175 (1925)

The reviser's note to A.R.S. § 25-211 also indicates the adoption of the Arizona Statute both from Washington and from Texas. [See RCW 26.16.030, 26.16.040 and Vernon's Annotated Civil Statutes, Art. 4619]

The Arizona Court of Appeals has validated the conclusion that the proceeds of term life insurance payable to one spouse upon the death of the other is characterized at death as separate property, rather than as community property at the time when the premiums were paid. In *Gaethje v. Gaethje*, 8 Ariz. App. 47, 442 P.2d 870 (1968), the Arizona Court of Appeals specifically adopted the view of 1 Appleman, *Insurance Law and Practice* (1965) § 3, at 14:

> " A true term contract would have no loan or cash value, or, in fact, any value except in the event of the death of the insured prior to the expiration of the contract."

Proceeding from that premise, the Court then concluded:

> " Upon the death of the insured, the value of a term policy purchased with community funds is measured by the proceeds of the policy, and not the premiums paid thereon. *Davis v. Prudential Insurance Co. of America*, 331 F.2d at 350-351.

" We, therefore, do not regard the proceeds of this policy to be property which must take on a community or separate character depending upon the time of the initiation of the insurance contract, . . . " 8 Ariz.App. 47 at 52.

Since there are no proceeds of the insurance policy until after the community was dissolved by the death of one of the insured spouses in this case, it is wholly inappropriate to interpret the entitlement to those proceeds under statutes relating to the disposition of community property, as the petitioners contend. The statutes relied upon by the petitioners are both limited in their application to community property assets. A.R.S. §§ 14-224, -225, -226. In A.R.S. § 14-225, the proviso regarding distribution of insurance proceeds of community property policies implicitly recognizes that all insurance acquired during marriage is *not* community property, where it states:

" . . . but if the policy is community property of the insured and his spouse . . . "

Illustrative of this distinction is *In Re Towey's Estate*, cited above, which holds that insurance contracts acquired during marriage and made payable to the estate of a deceased spouse are community property. (155 P.2d 273 at 275, note 11.)

The other major defect of the petitioners' position is the existence of contingent beneficiaries to the insurance contract in addition to the two spouses. The policy designates as contingent beneficiaries the three children of the two insured parents. (Appendix, pp. A15 and A22) So it is of no benefit to the petitioners to argue that A.R.S. 14-225 applies to the interpretation of this contract, since that statute is expressly limited to instances in which there are no alternative beneficiaries.

For A.R.S. § 14-225) to be applied, first the proceeds must be community property, and secondly there must be "no alternative beneficiary, or no alternative beneficiary except the estate or personal representatives of the insured, . . . "(Petition, p. 3, supra)

Since it is stipulated that these three children died in the same common disaster as their parents, and there is no evidence of the order of death, the presumption of the contingent beneficiaries' survival under the provisions of A.R.S. § 20-1127 applies and precludes the petitioners' argument. The estates of the three deceased children have never been parties to this litigation.

Here, there is neither community property, nor an absence of alternative beneficiaries to justfy application of the statutes relied upon by the petitioners. Without such support the argument falls of its own weight. Under the circumstances, any review by this Court must then necessarily reach the same conclusion as did the Ninth Circuit. Nothing in the petition commends such unnecessary redundancy.

CONCLUSION

Nothing contained in the petition constitutes special and important reasons to justify review by this Court. Therefore, the respondent, Republic National Life Insurance Company, submits that the petition for Writ of Certiorari should be denied.

Respectfully submitted,

CARSON MESSINGER ELLIOTT
LAUGHLIN & RAGAN

By.....
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Counsel for RESPONDENT

CERTIFICATE OF SERVICE

I, Robert W. Holland, do hereby certify that on this, the 21st day of January, 1975, three (3) copies of the Brief in Opposition to Petition for Writ of Certiorari, were mailed by depositing the same in a United States mail box, with first class postage prepaid, addressed to James P. Cunningham, 9th Floor Luhrs Building, Phoenix, Arizona, 85003, counsel for petitioner, in compliance with Rule 33, paragraph 3(b) Rules of the Supreme Court of the United States. I further certify that all parties required to be served have been served.

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Counsel for RESPONDENT
Republic Naitonal Life Insurance Company

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ORVAL M. RHODES and WILLIAM A. GUFFEY, as Co-Administrators of the Estate of MORIS O. RHODES and BEVERLY J. RHODES, Deceased,
Plaintiffs-Appellees,
vs.
REPUBLIC NATIONAL LIFE INSURANCE COMPANY,
Defendant-Appellant.

No. 72-2595

OPINION

[July 1, 1974]

Appeal from the United States District Court
for the District of Arizona

Before: CARTER, GOODWIN and WALLACE, Circuit Judges.

WALLACE, Circuit Judge:

The administrators of the estates of Moris O. Rhodes and Beverly J. Rhodes, deceased, sought a declaratory judgment as to the correct construction of a life insurance policy issued by Republic National Life Insurance Company (the Company) through its predecessor, Pacific National Life Assurance Company. The Company admitted coverage, but argued that its liability was limited to $3,000, rather than $26,625.30 as claimed by the administrators. The district court granted the administrators' motion for summary judgment and entered judgment against the Company in the amount of $23,625.30. The Company appeals and we reverse.

On February 11, 1964, Moris Rhodes entered into a contract of life insurance with the Company (the Husband's Policy). Under the policy the Company was liable, upon proof of Mr. Rhodes' death, for a lump sum and for a monthly income benefit until the end of the protection period. In April, 1965, the policy was amended by the addition of a rider entitled "CHILDREN'S

BENEFIT FOR TERM INSURANCE TO AGE 25" (the children's Benefit Rider) under which the life of each of Rhodes' three children was insured for a lump sum. The Company has settled its liability under the Children's Benefit Rider and Mr. Rhodes' policy and they are discussed here only as background. In April, 1965, the Husband's Policy was also amended by the addition of a rider entitled "WIFE'S INSURANCE BENEFIT" (the Wife's Benefit Rider). The correct construction of this rider is the subject of this dispute. On September 5, 1970, the Rhodes, together with their children, perished in a flash flood near Payson, Arizona. There was no evidence that their deaths were otherwise than simultaneous.

The Wife's Benefit Rider is captioned by the following:

> WIFE'S INSURANCE BENEFIT FOR ADDITIONAL INSURANCE OVER A TERM PERIOD AND PAYABLE AS A MONTHLY INCOME TO THE END OF THE PERIOD OR UPON ELECTION AS A SINGLE PAYMENT, IF THE INSURED'S WIFE'S DEATH OCCURS DURING THE PERIOD

The benefit paragraph of the rider reads as follows:

> The Company agrees, subject to the terms and conditions of this Provision and the Policy, to pay the following benefits immediately upon due proof of the death of the Insured's wife named in the application, while the policy and this Provision are in force:
>
> 1. For each unit of this benefit shown on page 3 [3 units]
>
> a. $1,000 payable immediately in one sum.
>
> b. If the wife has not attained age 50, a monthly income of $50 beginning at the date of the Insured's wife's death and payable at monthly intervals until the end of the month in which the Insured's wife would have attained age 50.
>
> 2. If a Children's Benefit is attached to the policy, it will be continued in force as fully paid-up term insurance to the child's 25th birthday.
>
> . . . .
>
> The Benefit under this Provision is payable in addition to any amount otherwise payable under the policy.

Republic National Life Insurance Company

This Provision is made a part of the policy to which it is attached, in consideration of the application, a copy of which is attached to and made a part of the policy, and payment of the premiums specified on page 3 applicable to this Benefit and the Life Insurance Benefit.

The benefits are limited by the following paragraph:

Benefit After Death of Insured

In the event of the Insured's death while the policy and this Benefit are in force in place of all other benefits hereunder, the Company will issue to the Insured's wife a paid-up term life insurance policy in the amount of $1,000 Sum Insured for each unit of this Benefit shown on page 3, which will expire on the policy anniversary following the Insured's wife's 65th birthday.

Upon the wife's death, the proceeds are to be paid according to the following paragraph:

Payment of Proceeds

Any proceeds payable under this Provision because of the death of the Insured's wife will be paid to the Insured, if living, otherwise to the estate of the Insured's wife, unless otherwise provided. The payee may elect to receive the commuted value of such monthly income in one sum. The commuted value shall be computed by discounting the monthly income payable at 3% interest, compounded annually.

The administrators argue that these paragraphs are ambiguous and, thus, under well-established principles [*see, e.g., Liverpool & London & Globe Ins. Co. v. Kearney*, 180 U.S. 132, 136 (1901); *Pacific Mut. Life Ins. Co. v. Young*, 40 Ariz. 1, 10, 9 P.2d 188, 191 (1932)] we are required to construe the language against the Company and in favor of insurance coverage. As ambiguities, they point to the fact that the caption does not condition the payment of the monthly benefit upon the survival of the husband, that the benefit is payable in addition to any amounts otherwise payable under the policy, that the payee may be the wife's estate if the insured is not living (indicating that the Company contemplated that the husband might predecease the wife) and that

the policy does not provide that the death of the insured prior to the death of the wife is one of the conditions which terminates the benefit.

Although we concede that the policy should have been drafted with more clarity and that the Wife's Benefit Rider may be difficult to understand, when it is viewed as part of a package providing insurance protection for the whole family, the paragraphs are not ambiguous. Under the Husband's Policy, the wage-earner's life was insured to protect the other members of the family in the event of his death. Under that policy the Company agreed to pay to the wife, upon proof of the husband's death, a lump sum plus a monthly income until the end of the period when the children would normally be expected to have become independent. Thus, the wife was protected with a lump sum to cover burial and other immediate expenses and with a monthly income during the years she would have been responsible for the young children.

Under the Children's Benefit Rider the Company agreed to pay the husband, upon proof of a child's death, a lump sum, thus protecting the family from death and burial expenses. Under the Wife's Benefit Rider the Company agreed to pay the husband, upon proof of the wife's death, a lump sum, protecting against burial and death expenses, plus a monthly income until the time when the wife would have reached age 50. Thus, the husband was assured that in the event of his wife's death he would have been able to continue to work and also would have been able to hire a housekeeper and to provide for child care until the children would have become independent. The monthly income coverage, however, was conditioned upon the husband surviving the wife. This is logical since if the husband had predeceased the wife, the children would have received the benefit from the monthly income under the husband's policy. An additional monthly income under the Wife's Benefit Rider would have been double protection. Thus, if the husband had predeceased the wife, the Company under the alternative coverage of the Wife's Benefit Rider would have issued her a paid-up term policy to pay a lump sum at her death, which could have been used for death and burial expenses. The paid-up term life would have expired when she would have reached age 65.

The language of the Wife's Benefit Rider, when viewed in this light, is not ambiguous. Although the caption does not contain any conditions, the first sentence of the first paragraph provides that the Company shall pay the benefits "subject to the terms and conditions of this Provision [the Wife's Benefit Rider] and the policy . . . ." One of the conditions is that if the husband predeceases the wife, the Company will issue "in place of all other benefits hereunder" a paid-up term life insurance policy for a lump sum. Consistent with this condition, the paragraph providing for the payment of the proceeds provides that if the husband has predeceased the wife, the proceeds, which would then be only the lump sum, shall be paid to the estate of the wife. It is only natural that the Company would contemplate the prior death of the husband and provide both for a reduction in coverage and for a contingent beneficiary; but that does not make ambiguous the paragraph which reduces the coverage by terminating the monthly income benefit. The clause making the benefit under the Wife's Benefit Rider payable in addition to the other benefits under the policy can reasonably refer only to the benefits under the Husband's Policy and the Children's Benefit Rider. Finally, the policy does not provide that the death of the husband prior to the wife's death terminates the benefit because his prior death only alters the scope of the wife's coverage; it does not completely terminate the benefit. We hold that, when viewed as part of a family insurance package, the Wife's Benefit Rider is not ambiguous.

The ambiguity in this case arises only because of the lack of evidence concerning the order of death. The policy does not provide for this contingency; but an Arizona statute does and the parties must be presumed to have contracted with knowledge of the existing statutes. *Broeren v. Beaunit Corp.*, 440 F.2d 1244, 1249 (7th Cir. 1970); *In re Clise's Estates*, 64 Wash.2d 320, 322, 391 P.2d 547, 549 (1964). Arizona Revised Statute § 20-1127 reads:[1]

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[1]Ariz. Rev. Stat. § 14-2808, dealing with the succession of estates, is similar to section 20-1127:

> Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary,

> Where the individual insured or the annuitant and the beneficiary designated in a life insurance policy or policy insuring against accidental death or in an annuity contract have died and there is not sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy or contract shall be distributed as if the insured or annuitant had survived the beneficiary, unless otherwise specifically provided in the policy or contract.

The Company argues that under this statute Beverly, as the person insured under the Wife's Benefit Rider, must be presumed to have survived her husband, the beneficiary. Thus, the Company argues, at the presumed moment of the wife's death only the reduced benefit was in effect and the Company is liable only for $3,000.

The administrators answer by arguing first that the terms of the statute must be given the same meaning as the terms of the policy. Accordingly, they argue, that since Moris is defined as the "insured" in the Husband's Policy and since he is referred to as the "insured" in the Wife's Benefit Rider, he must also be deemed to be the "insured" under the statute. Thus, the administrators conclude that the husband should be presumed to have died last, entitling the estate to the commuted value of the monthly income.

This argument is spurious. The terms of the statute must be given their usual meaning, unless they are specifically defined otherwise within the statute. *Malat v. Riddell*, 383 U.S. 569, 571 (1966). The term "insured" as used in the statute can only refer to the person whose death triggers the Company's liability for the benefits provided by the policy. *See In re Clise's Estates*, 64 Wash.2d at 323, 391 P.2d at 549. Under the Wife's Benefit Rider this person was Beverly.

---

but if the policy is community property of the insured and his spouse and there is no alternative beneficiary, or no alternative beneficiary except the estate or personal representatives of the insured, the proceeds shall be distributed as community property under [section 14-2807].

Since the issue in this case deals primarily with a question of insurance rather than succession, we have applied section 20-1127.

The administrators next argue that section 20-1127 does not apply in this case, thus creating an ambiguity that must be resolved in favor of coverage. They reason that the purpose of the simultaneous death act is only to control the distribution of insurance proceeds over the Company's liability has been established, not to aid in determining whether the company is liable in the first instance. They have not cited any authority for this position

Although there is some merit to their argument, we do not believe we can adopt it primarily because we have already elected to apply a similar simultaneous death act in determining whether a decedent owned, at the time of her death, a property interest in a policy on her husband's life. In *Estate of Chown v. Commissioner,* 428 F.2d 1395 (9th Cir. 1970), we held that a life insurance policy owned by a wife on the life of her husband must be valued for estate tax purposes according to a theory that uses the life expectancy of a man of the husband's age (interpolated terminal reserve value) without consideration of the fact that there was no evidence that the husband died otherwise than simultaneously with the wife. In order to reach the question of valuation we had to conclude that the wife at the time of her death held sufficient incidents of ownership to require that the policy be included in her gross estate.[2] If the husband had predeceased her or had died simultaneously with her, she would not have held any of the required incidents of ownership since her right to change the beneficiary, to surrender the policy, to borrow on it or to assign it would have been extinguished at the death of the insured. *Estate of Wien v. Commissioner,* 441 F.2d 32, 35 (5th Cir. 1971). In assuming that Mrs. Chown held the required incidents of ownership, we relied upon the Oregon Uniform Simultaneous Death Act[3] under which, for purposes of distributing the proceeds, the beneficiary is presumed to have predeceased the insured. Thus, we held that the insurance policy had to be valued

[2]Int. Rev. Code of 1954, § 2042.

[3]The statute involved in *Chown* provided:

> Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

428 F.2d at 1396.

as if the wife had preceded the husband in death. 428 F.2d at 1397.

Three other circuits also relying upon simultaneous death acts, have reached this same conclusion. *Estate of Wien v. Commissioner*, 441 F.2d 32 (5th Cir. 1971); *Estate of Meltzer v. Commissioner*, 439 F.2d 798 (4th Cir. 1971); *Old Kent Bank & Trust Co. v. United States*, 430 F.2d 392 (6th Cir. 1970). In *Estate of Wien v. Commissioner*, the Fifth Circuit, after reviewing the purpose of the simultaneous death act, stated:

> Consequently, Ellen, as the owner-beneficiary of the policies on Sidney's life, is treated for property purposes as if Sidney still survived at the instant of her death. Since it is Sidney's death alone which could have caused the extinguishment of Ellen's ownership rights, it is clear that under state law Ellen's ownership rights were intact and in her estate at the moment of her death.

441 F.2d at 36. The court explained that in determining questions of ownership of property for purposes of taxation it must apply state law and stated:

> Applying these principles to the instant case we conclude that Ellen, as the owner-beneficiary of policies insuring Sidney's life, had under Georgia law at the time of her death an ownership interest which was a valuable property right, and that the value of this interest must be included in her estate under § 2033.

441 F.2d at 37. In *Wien*, the Fifth Circuit did expressly what we did implicitly in *Chown;* it relied upon the simultaneous death act to conclude that the decedent had an ownership interest in the insurance policy at the time of death.

We recognize that under the simultaneous death act the insured is not presumed to have survived the beneficiary for all purposes, but only that the proceeds of the policy shall be distributed as if the insured had survived the beneficiary. Indeed, in *Wien* the Fifth Circuit stated that "the application of that act is not tantamount to a finding that the parties in fact died simultaneously. Rather, the application of the act . . . simply makes the actual order of death irrelevant and mandates that the property be dis-

posed of as if the insured survived the beneficiary." 441 F.2d at 39. But if we were to construe the act to be applicable only once the insurance company's liability is established, we would have to ignore the fact that we and the other circuits have relied upon the act for determinations other than the distribution of proceeds. To do so, we would need to carve out an artificial exception to a well-recognized statutory interpretation. This we are not justified in doing. In addition, by so limiting the application of the act we would limit its usefulness in resolving problems of construction when the parties fail to anticipate such contingencies in advance.

We conclude, therefore, that the Wife's Benefit Rider must be construed as if Moris had predeceased Beverly, thus reducing her coverage to include only a paid-up term life policy for a lump sum of $3,000.

REVERSED.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO 7-8 '4—480

A-10

PACIFIC NATIONAL LIFE
ASSURANCE COMPANY

HOME OFFICE SAN FRANCISCO

SCHEDULE

INSURED: MORIS ORVAL RHODES POLICY NUMBER: 148288

AMOUNT OF INSURANCE : $ 10,000.00 AGE: 29

PREMIUM : $ ~~21.80~~ *27.69 DATE OF POLICY: FEBRUARY 11, 1964
$99 special premium on cover

Period Payable : 61 years MATURITY DATE FEBRUARY 11, 2025

Due Dates : 11th day of each month

BENEFICIARY : BEVERLY JO RHODES, WIFE, IF LIVING; OTHERWISE, TO NATASHA INEZ RHODES, TARA ALENA RHODES AND ERIC ALTON RHODES, DAUGHTERS AND SON AND ANY OTHER CHILDREN BORN OF THE MARRIAGE OF BEVERLY JO RHODES, WIFE AND THE INSURED (SHARE AND SHARE ALIKE) OR TO THE SURVIVORS OR SURVIVOR OF THEM (See Direction for Settlement)

ORDINARY LIFE

ENDOWMENT AT AGE 90

NON PARTICIPATING INSURANCE

*Change made effective 12-11-67

WAIVER OF PREMIUM BENEFIT INCOME SECURITY RIDER

Secretary

THE COMPANY WILL PAY the amount of Insurance to the Insured if living on the Maturity Date.

THREE UNITS OF LIFE AND CHILDREN'S INSURANCE BENEFIT ADDED EFFECTIVE 4/11/05
(SEE ENDORSEMENT ON BACK OF COVER)

THE COMPANY WILL PAY the Amount of Insurance to the then entitled Beneficiary immediately upon receipt of due proof of death of the Insured; provided, however, that if the age of the Insured stated above be zero and if such death occurs on or before the Insured reaches the age of six months, the amount payable hereunder will be one-fourth the Amount of Insurance.

THE CONSIDERATION for this Policy is the payment of the Premium specified above on or before the delivery of this Policy and of a like premium on each Due Date after the Date of Policy until premiums have been paid for the period specified above or until the prior death of the Insured.

THE PROVISIONS on the following pages are a part of this contract.

IN WITNESS WHEREOF, the Pacific National Life Assurance Company has caused this policy to be executed at its Home Office in San Francisco, California, as of the Date of Policy.

Attest:

Secretary

President

Examined By

Form 923 661

Changes as endorsed effective
PACIFIC NATIONAL LIFE ASSURANCE COMPANY
Date
Assistant Secretary

sb

GENERAL PROVISIONS

THE CONTRACT. This Policy and the application therefor, a copy of which is attached hereto and made a part hereof, constitute the entire contract between the parties. All statements made by the Insured or by the Applicant, if other than the Insured, shall, in the absence of fraud, be deemed representations and not warranties and no such statement shall void the Policy or be used in defense of a claim hereunder unless it is contained in such application. No alteration of this Policy and no waiver of any of its provisions shall be valid unless made in writing by the Company and signed by an officer of the Company.

CONTROL OF POLICY. During the minority of the Insured the right to excercise all privileges under this Policy and to agree with the Company as to any change in or amendment to this Policy shall vest successively, during their respective lifetimes, in the Applicant, the Beneficiary, the Contingent Beneficiary, if any, and the Insured. After the Insured has attained his majority, unless otherwise provided by amendment or endorsement, these rights shall vest solely in the Insured. Any person holding such rights shall be designated as Owner of this Policy.

INCONTESTABILITY. This Policy shall be incontestable after it has been in force during the lifetime of the Insured for a period of two years from the Date of Policy except for non-payment of premiums and except for any provisions granting benefits in the event of accidental death or in the event of total disability, if contained herein.

PREMIUM PAYMENTS. Receipt of the first premium is hereby acknowledged. All premiums after the first shall be payable in advance either at the Home Office in San Francisco, California, or to an agent of the Company, upon delivery of a receipt signed by the President or Secretary of the Company and countersigned by such agent. If any premium is not paid when due or the grace period hereinafter provided, this Policy shall lapse as of date to which premiums have been paid and shall become of no value except for nonforfeiture benefits as herein provided.

On any policy anniversary the mode of premium payment may be changed to annual, semi-annual, or quarterly in accordance with the published premium rates in use by the Company on the Date of the Policy.

If the premium for the whole or any part of a policy year in which the death of the Insured occurs has been paid for any period beyond the end of the policy month in which such death occurs, the Company shall pay to the Beneficiary the portion of such premium applicable to such period.

GRACE PERIOD. A grace period of thirty-one days, without interest, will be allowed for the payment of any premium due after the first during which period the Policy will continue in force. If the Insured dies within said period the unpaid premium shall be deducted from the amount payable hereunder.

REINSTATEMENT. If this Policy lapses because of nonpayment of premium and shall not have been surrendered for its cash surrender value, it may be reinstated at any time within five years after default in premium payment upon presentation of evidence of insurability satisfactory to the Company, payment of all past due premiums and payment or reinstatement of any indebtedness which existed at the date of such default, with interest on such premiums from their respective Due Dates and on such indebtedness at the rate of 5½% per year, compounded annually.

CHANGE OF PLAN. On any policy anniversary and while no premium is in default, this Policy may be exchanged without evidence of insurability for any nonparticipating form of policy which was customarily issued by the Company on the Date of Policy on which premiums will be payable for at least ten years after the date of exchange at a higher rate than on this Policy exclusive of premiums for additional benefits provided by riders, if any, attached hereto. Such policy shall be for an amount equal to the net sum of insurance hereunder at the date of exchange and shall bear the same date the insurance hereunder begins.

Such exchange shall be made upon the written request of the Owner and any assignee and irrevocable beneficiary and upon payment to the Company of a sum computed by which ever one of the following methods produces the larger amount.

(1) The difference between the premiums which would have been paid if this Policy had been originally issued on the new plan and the premium paid hereon (exclusive of premiums for additional benefits provided by riders, if any, attached hereto) with compound interest at 5½% per annum, computed on the difference in such premiums from the due date of each premium to the date of exchange; or

(2) The difference between the cash values of the new and the old policies for the number of years paid on the old policy, increased by 5½% of such difference.

The new policy will be issued on the basis of the same mortality and premium classification as this Policy. Except with the consent of the Company, the new policy shall not include benefits in event of total and permanent disability or additional benefits in event of death by accidental means. If any such benefits are included, the Owner shall pay such additional amounts as the Company may require.

MISSTATEMENT OF AGE. If the age of the Insured has been misstated any amount payable hereunder shall be such as the premiums paid would have purchased at the correct age.

SUICIDE. If the Insured shall commit suicide while sane or insane within two years from the beginning of the first policy year hereof, the liability of the Company under this Policy shall be limited to the premiums actually paid hereon, less any indebtedness.

CHANGE OF BENEFICIARY. While this Policy is in force, if the right to change the beneficiary has been reserved, the Insured, subject to the terms of any existing assignment, may change the beneficiary by filing at the Home Office in San Francisco, California, on a form to be furnished by the Company a written request for such change. Such change shall take effect upon the receipt at the Home Office in San Francisco, California, of such completed form designating the change of beneficiary. During the lifetime of any irrevocable beneficiary the written consent of such beneficiary shall be necessary to any revocation or change of beneficiary.

If there be more than one beneficiary, whether revocably or irrevocably designated, the interest of any beneficiary who predeceases the Insured shall pass to the survivor or survivors unless otherwise directed by the Insured in writing and so endorsed by the Company on this Policy. If no designated beneficiary survives the Insured and it is not otherwise provided, the proceeds of this Policy shall be payable in one sum to the executors, administrators or assigns of the Insured.

SETTLEMENT AND INDEBTEDNESS. Any sums payable by the Company under this Policy shall be payable at the Home Office in San Francisco, California. Any indebtedness to the Company on account of this Policy shall be deducted in any settlement hereunder. The Company may defer the granting of a cash surrender value or of a loan, except a loan for payment of premiums on its policies, for the period permitted by law but not exceeding 6 months after receipt of the application therefore.

RESERVE. The reserve on this policy shall not be less than that computed according to the Commissioner's Reserve Valuation Method. The reserve and net single premiums referred to herein shall be based on the Commissioner's 1941 Standard Ordinary Table of Mortality, with interest at the rate of 3½% per annum until the "Policy Anniversary on Which Interest Rate Changes," as shown below the table of non-forfeiture values, and at the rate of 2¾% thereafter.

ASSIGNMENT. No assignment of this Policy shall be binding upon the Company until it is filed with the Company Home Office in San Francisco, California. The Company will assume no responsibility for the validity or sufficiency of any assignment and any claim thereunder shall be subject to proof of interest and extent thereof.

A-12

...Providing for Waiver of Premium Benefit
in Event of

TOTAL AND PERMANENT DISABILITY

Upon receipt at the Home Office in San Francisco, California, in accordance with the conditions hereinafter stated, of written notice of claim of disability and due proof that the Insured has become totally and permanently disabled by bodily injury or disease originating after the effective date of this rider, and as defined herein, the Company will waive the payment of all premiums falling due under the policy after the commencement and during the continuance of such total and permanent disability; provided, however, that no premium shall be waived the due date of which is more than six months prior to the date of receipt at the Home Office in San Francisco, California, of written notice and proof of claim hereunder. The amount payable under any settlement will not be reduced by any premiums waived under this rider and the dividend, if any, and nonforfeiture values, if any, will be the same as if the premiums so waived had been paid in cash.

Consideration — The annual premium for this rider, or the corresponding semi-annual, quarterly or monthly premium, as the case may be, is included in the premium stated on the face of the policy and is payable at the times and in the manner there specified. Any premium on the policy falling due on or after the termination of this rider shall automatically be reduced by the premium for this rider.

Definition of Total and Permanent Disability — Disability shall be deemed to be total when the Insured is prevented thereby from engaging in any occupation or from performing any work for compensation or profit. Such total disability shall be presumed to be permanent (but only for the purpose of determining the commencement of liability hereunder) when it is present and has existed continuously as above set forth for not less than four consecutive months. Without prejudice to any other cause of disability, the entire and irrecoverable loss of the sight of both eyes or the total and permanent loss by removal or disease of the use of both hands or both feet or of one hand and one foot shall be considered as total and permanent disability within the meaning hereof.

Notice and Proof of Claim — Written notice of claim and due proof of total and permanent disability of the Insured must be presented to the Company at its Home Office in San Francisco, California, (a) while the Insured is living and during the continuance of total and permanent disability and (b) before the policy anniversary on which the age of the Insured at nearest birthday is sixty if a male life or fifty-five if a female life, provided, however, that failure to give such notice and proof within such times shall not invalidate any such claim if it shall be shown that such notice and proof were given as soon as was reasonably possible. In case any premium on the policy is in default before receipt at the Home Office in San Francisco, California, of written notice and due proof of claim hereunder, disability benefits shall be allowed only if such notice and proof are received within one year of the due date of the first premium in default and if the total disability for which claim is made commenced prior to the due date of such first premium in default or subsequent to the due date of such first premium in default but within the grace period allowed by the policy for payment of such premium. In either event, no premium shall be waived the due date of which is more than six months prior to receipt of such notice and proof and the Owner shall be liable for any premiums in default before such six months period, with interest at 5½% per annum.

As a condition precedent to approval of claim, the Company shall have the right and opportunity to have one or more physicians designated by it examine the Insured when and so often as it may reasonably require.

Proof of Continuance of Disability and Recovery from Disability — Even though proof of disability has been accepted by the Company as satisfactory, the Company at any time may require due proof of the continuance of such disability and may require the Insured to submit to an examination by one or more physicians designated by the Company, however, after such disability shall have continued for two full years, the Company will not require such proof or examination more often than once in each subsequent year. If, on request, such proof is not furnished or the Insured fails to submit to such an examination, or if the Insured so far recovers as to be able to engage in any occupation or to perform any work for compensation or profit, then all waiver of premium benefits shall cease and all premiums thereafter falling due must be paid as originally provided in the policy. The Owner agrees to give immediate notice to the Company if and when the Insured recovers from such disability.

Exclusions — The disability benefits provided herein shall not be granted if the disability results (1) from intentional self-inflicted injury, (2) from any act attributable to war, declared or undeclared, or (3) from military, naval or air service for any country at war, declared or undeclared.

Contestability — In accordance with the exception set forth in the incontestable clause of the policy, the Company may contest liability under this rider at any time and for any cause, inclusive of causes relating to the validity of the policy as a contract at its inception.

Termination — This disability rider shall terminate (a) on the policy anniversary on which the age of the Insured at nearest birthday is sixty if a male life or fifty-five if a female life or (b) when any premium on this rider or on the policy to which it is attached is not paid when due or within the days of grace for payment of such premium, or it may be terminated on the due date of any premium on the policy by written request of the Owner accompanied by the policy for endorsement.

Effective Date — The effective date of this rider is the date of the policy to which it is attached.

THE PACIFIC NATIONAL LIFE ASSURANCE COMPANY

Secretary

President

Form WP 6 61

INCOME SECURITY

ATTACHED TO AND MADE A PART OF POLICY NO. 148388

MONTHLY INCOME $ ~~144.40~~ $79.20

RIDER DATE FEBRUARY 11, 1964

TERMINATION DATE FEBRUARY 11, 1983

Partially converted effective 12-11-67.
Change made effective 12-11-67

Secretary

In accordance with the provisions of this rider the Company will pay the monthly income benefit upon receipt of due proof of death of the Insured occurring before the end of the income security period.

MONTHLY INCOME BENEFIT. The Company will pay a monthly income commencing as of the date of death of the Insured and payable on the same day of each month thereafter, and terminating with the payment on the monthly payment date immediately before the end of the income protection period. The monthly income payable shall be the amount shown above.

INCOME SECURITY PERIOD. The income security period shall begin on the rider date and end on the termination date hereof.

BENEFICIARY PROVISION. As each payment of the monthly income becomes due it shall be made to the entitled beneficiary who is then entitled, under the provisions of the policy, to receive proceeds payable because of the death of the Insured. If the entitled beneficiary under the provisions of the policy is not an individual receiving payment in his or her own right, the commuted value of the payments to become due to such beneficiary under this rider shall be paid in one sum.

ASSIGNMENT OR COMMUTATION. No beneficiary shall have the right to assign or commute payments under this rider unless such right is given to such beneficiary in writing and recorded at the Head Operating Office of the Company.

PAYMENT TO CREDITORS. If a creditor beneficiary or assignee has an interest in the proceeds payable under this rider, such interest shall be deducted from the commuted value and paid in one sum. Any remainder shall be applied to pay the monthly income until such remainder, with interest at 2½% compounded annually, shall be paid in full.

INCONTESTABILITY AND SUICIDE. In applying the provisions of the policy relating to incontestability and suicide to this rider, the date of policy shall be the rider date.

AUTOMATIC TERMINATION. This rider shall automatically terminate (1) if any premium remains unpaid after the end of the grace period, (2) if the policy is surrendered or continued under a non-forfeiture provision, if any, (3) if the policy becomes paid up or matures or terminates, or (4) at the end of the income security period.

PRIVILEGE OF CONTINUATION. If this policy, exclusive of riders, provides term insurance which is converted this rider shall be continued as a part of the new policy.

CONVERSION PRIVILEGE. Upon written request made while this rider is in force, this rider may be converted without evidence of insurability to any plan of non-participating whole life or endowment insurance of the same mortality classification as this rider written by the Company on the date of the new policy. The premium for the new policy shall be based on the premium rate in use by the Company for the plan selected and for the age, nearest birthday, of the Insured at the date of the new policy. Evidence of insurability of the Insured satisfactory to the Company must be submitted before any disability benefits applying to this rider shall be included as a part of the new policy.

Conversion As of Rider Date. On request of the owner the new policy may be dated as of the rider date if the conversion privilege is exercised within 5 years from that date. The amount of insurance under the new policy must not be less than the minimum required by the Company for the plan selected, nor greater than the commuted value of the remaining monthly income of this rider at the date of conversion. The conversion shall be subject to payment to the Company in cash of the reserve of the new policy at the date of conversion increased by 5½%.

Conversion At Attained Age. At any time prior to the Insured having attained age 65, nearest birthday, and while this rider is in force it may be exchanged for a new policy dated as of the date of conversion. The amount of insurance of the new policy must not be less than the minimum required by the Company for the plan selected nor greater than the commuted value of the remaining monthly income of this rider at the date of conversion.

COMMUTED VALUE. The term "commuted value" as used in this rider shall mean the present value of the monthly income thereafter payable, computed by discounting such income with interest at 2½% compounded annually. The following table shows the commuted value for each $10 per month of monthly income remaining to be paid for the number of policy years and months shown.

GENERAL PROVISIONS

THE CONTRACT. This Policy and the application therefor, a copy of which is attached hereto and made a part hereof, constitute the entire contract between the parties. All statements made by the Insured or by the Applicant, if other than the Insured, shall, in the absence of fraud, be deemed representations and not warranties and no such statement shall void the Policy or be used in defense to a claim hereunder, unless it is contained in such

for an amount equal to the amount of insurance hereunder at the date of exchange and shall bear the same date the insurance hereunder begins.

Such exchange shall be made upon the written request of the Owner and any assignee and irrevocable beneficiary and upon payment to the Company of a sum computed by which ever one of the following methods produces the larger amount.

Yrs.	Months											
	0	1	2	3	4	5	6	7	8	9	10	11
*35	2815	—	—	—	—	—	—	—	—	—	—	—
34	2764	2768	2772	2777	2781	2785	2789	2794	2798	2802	2806	2811
33	2711	2716	2720	2724	2729	2733	2738	2742	2746	2751	2755	2759
32	2657	2662	2666	2671	2675	2680	2684	2689	2693	2698	2702	2707
31	2602	2607	2611	2616	2621	2625	2630	2634	2639	2644	2648	2653
30	2546	2550	2555	2560	2565	2569	2574	2579	2583	2588	2593	2597
29	2488	2492	2497	2502	2507	2512	2517	2522	2526	2531	2536	2541
28	2428	2433	2438	2443	2448	2453	2458	2463	2468	2473	2478	2483
27	2367	2372	2377	2383	2388	2393	2398	2403	2408	2413	2418	2423
26	2305	2310	2315	2321	2326	2331	2336	2341	2347	2352	2357	2362
25	2241	2246	2251	2257	2262	2268	2273	2278	2284	2289	2294	2299
24	2175	2181	2186	2192	2197	2203	2208	2214	2219	2225	2230	2235
23	2108	2114	2119	2125	2131	2136	2142	2147	2153	2159	2164	2170
22	2039	2045	2051	2056	2062	2068	2074	2079	2085	2091	2097	2102
21	1968	1974	1980	1986	1992	1998	2004	2010	2016	2021	2027	2033
20	1896	1902	1908	1914	1920	1926	1932	1938	1944	1950	1956	1962
19	1822	1828	1834	1840	1847	1853	1859	1865	1871	1878	1884	1890
18	1746	1752	1758	1765	1771	1778	1784	1790	1797	1803	1809	1815
17	1668	1674	1681	1687	1694	1700	1707	1713	1720	1726	1733	1739
16	1588	1594	1601	1608	1615	1621	1628	1635	1641	1648	1655	1661
15	1506	1513	1520	1527	1533	1540	1547	1554	1561	1567	1574	1581
14	1422	1429	1436	1443	1450	1457	1464	1471	1478	1485	1492	1499
13	1336	1343	1350	1357	1365	1372	1379	1386	1393	1401	1408	1415
12	1248	1255	1262	1270	1277	1285	1292	1299	1307	1314	1321	1328
11	1157	1165	1172	1180	1188	1195	1203	1210	1218	1225	1233	1240
10	1064	1072	1080	1088	1096	1103	1111	1119	1126	1134	1142	1149
9	969	977	985	993	1001	1009	1017	1025	1033	1041	1049	1057
8	872	880	888	897	905	913	921	929	937	945	953	961
7	772	781	789	797	806	814	822	831	839	847	856	864
6	670	679	687	696	704	713	721	730	738	747	755	764
5	565	574	583	591	600	609	618	627	635	644	653	661
4	458	467	476	485	494	503	512	521	529	538	547	556
3	347	357	366	375	384	394	403	412	421	430	439	448
2	234	244	253	263	272	282	291	301	310	319	329	338
1	119	128	138	148	158	167	177	187	196	206	215	225
0	—	10	20	30	40	50	60	70	79	89	99	109

*Commuted values for longer periods will be furnished upon request

CANCELLATION. Upon written request by the owner of the policy, this rider may be cancelled on any premium due date.

NON-PARTICIPATING. This rider does not participate in the profits or surplus of the Company.

CONSIDERATION. This rider is issued in consideration of the application for this rider, a copy of which is attached to the policy and payment of the charge for this rider. The charge for this rider is included in the premium stated on the face of the policy and is payable under the same conditions except that such charge shall cease to be payable whenever this rider terminates.

Signed for the Company at its Home Office as of the rider date.

ATTEST:

Secretary

President

Direction for Settlement

To be attached to and be a part of Policy No. 145383

on the life of BORIS OAVAL RHODES, the Insured

PACIFIC NATIONAL LIFE ASSURANCE COMPANY, hereinafter called the Company is hereby requested to pay any proceeds due under the provisions of the above Policy on the Settlement Date to the beneficiaries designated below in accordance with and subject to the provisions (including the printed General Settlement Provisions) of this Direction for Settlement and the Policy. All prior beneficiary designations and directions for settlement under the Policy are revoked and the right is reserved by the undersigned to make further changes in such designations and directions from time to time during the life of the Insured without the consent of any beneficiary, subject to the terms of the Policy. Unless otherwise indicated below, the terms "Proceeds" and "Settlement Date" shall be as defined in the General Settlement Provisions.

Beneficiary Schedule

Classes of Beneficiaries in order of Priority	Designation of Beneficiaries		Date of Birth		
	Name	Relationship	Day	Month	Year
Primary Beneficiary	BEVERLY JO RHODES	WIFE	6	MARCH	1937
Contingent Beneficiary	NATASHA LUIZ RHODES	DAUGHTER	2	MARCH	1960
	TARA ALEXA RHODES	DAUGHTER	13	JAN.	1962
	ERIC ALTON RHODES	SON	18	SEPT.	1963
	AND ANY OTHER CHILDREN BORN OF THIS MARRIAGE (SHARE AND SHARE ALIKE).				

Payment of Proceeds

The amount of the Proceeds is to be determined under the terms of the Policy and no provision of this Direction for Settlement shall be construed as an agreement to pay a greater amount. Subject to the terms of the Policy and the provisions hereof, the Proceeds shall be paid to the above designated beneficiaries as follows:

Primary Beneficiary: Proceeds to be held by the Company under Option 1, with interest payments made annually for a period of 30 years and then paid in one sum

While the proceeds are held under Option 1, the Beneficiary shall have the Right of Withdrawal and the Right of Election of Other Options

Contingent Beneficiary: In one sum

GENERAL PROVISIONS

THE CONTRACT. This Policy and the application thereof, a copy of which is attached hereto and made a part hereof, constitute the entire contract between the parties. All statements made by the Insured or by the Applicant, if other than the Insured, shall, in the absence of fraud, be deemed representations and not warranties and no such statement shall void the Policy or be used in defense to a claim hereunder unless it is contained in the application.

EXCHANGE. The Owner may exchange this Policy for one or more subsequently issued policies of this Company on the life of the Insured, without evidence of insurability, payment of premium or charge, but only if the Company then issues such policies in exchange for policies of the form, type and age classification of this Policy. Any such exchange shall be made upon the written request of the Owner and any assignee and irrevocable beneficiary and upon payment to the Company of a sum computed by which ever one of the following methods produces the larger amount:

(a) the excess, if any, of the Net Cash Surrender Value of this Policy on the date of exchange over the Net Cash Surrender Value on the policy anniversary next following the date of exchange; or

(b) the excess, if any, of the Net Cash Surrender Value of this Policy on the date of exchange over the Net Cash Surrender Value on the same policy anniversary in the preceding policy year.

The new policy or policies issued in exchange for this Policy shall be for an amount equal to the amount of insurance hereunder at the date of exchange and shall bear the same date the insurance hereunder begins.

Such exchange shall be made upon the written request of the Owner and any assignee and irrevocable beneficiary and upon payment to the Company of a sum computed by which ever one of the following methods produces the larger amount:

GENERAL SETTLEMENT PROVISIONS

Article I. References and Definitions

(a) *Policy.* The term "Policy" as used herein means and includes each and all of the policies listed by number on the Direction for Settlement.

(b) *Proceeds.* The term "Proceeds" as used herein means the entire net amount payable on the Settlement Date under all policies then subject to this Direction for Settlement. With respect to any date subsequent to the Settlement Date, the term "Proceeds" shall mean the then present value of any unpaid amounts which are unconditionally to become due under the provisions of this Direction for Settlement.

(c) *Settlement Date.* The term "Settlement Date" as used herein means the date of the Insured's death unless otherwise indicated in the typewritten text hereof.

(d) *Option.* The term "Option" as used herein means the settlement option selected from the numbered Settlement Options of the Policy by any person having a right of selection under the terms of the Policy, and payment hereunder shall be made in accordance with and subject to the selected Settlement Option and all of the applicable schedules, rates of interest and limitations pertaining thereto except as the same may be modified by this Direction for Settlement.

(e) *Construction of Masculine Terms.* Masculine terms such as "He" "His," or "Him" as used herein shall be construed to apply to any designated person regardless of sex.

Article II. Beneficiaries and Priority

(a) *Priority of Payment.* Beginning on the Settlement Date a designated class of beneficiaries shall be entitled to payment of the Proceeds in the order designated on the first page of this Direction for Settlement if: (1) a designated member of the class of beneficiaries is then living and (2) there is not then living a designated member of a prior class of beneficiaries.

(b) *Plural Beneficiaries.* If a class of beneficiaries (e.g. Primary Beneficiary, Contingent Beneficiaries etc.) contains more than one person, the following shall apply unless otherwise provided in the typewritten text of this Direction for Settlement:

1. Each payment of Proceeds whether a one sum settlement or an installment payment under a single designated settlement option shall be made to the then living members of the class, share and share alike.
2. If payment of the Proceeds is to be made to the members of a class "in separate shares" under different settlement options then on the death of the Insured or on the subsequent death of the last surviving member of a prior class of beneficiaries, as the case may be, the Proceeds shall be apportioned to the then living members of the class of beneficiaries which is to receive payment, share and share alike, and each member's share shall be separately applied for his benefit under the designated option. If the death of any such beneficiary shall occur prior to his receipt of a full share, the unpaid portion of said share shall be reapportioned to the other beneficiaries of the class who are then living, share and share alike unless the Beneficiary Schedule on the first page hereof designates that the share of the deceased beneficiary shall be paid to the children of the deceased by representation. Except as otherwise indicated each such reapportioned share shall be paid in one sum.

(c) *Children.* Where the term "children" is used to designate beneficiaries within a class, it shall mean only lawful sons and daughters including those legally adopted and shall not be restricted to include children of other descendants.

(d) *Children by Representation.* If the words "Children by Representation" are included in a designation of a class of beneficiaries in this Direction for Settlement who are to receive payment of the proceeds or any part thereof, such words shall have the following effect. If a beneficiary (other than a child by representation) in such class is not living at a time when he or she would otherwise be entitled to payment hereunder, and if any lawful child of his or hers then living, or any lawful child by representation, the ancestor of which was then dead, such beneficiary would have been entitled, if living, shall be payable those who formerly child or if more than one such child, in equal shares. Go back to children.

(e) *Relationship.* The relationship of any beneficiary as stated in this Direction for Settlement is his relationship to the Insured unless otherwise indicated.

Article III. Rights of Withdrawal, Commutation and Election of Other Options

If under the payment of Proceeds provisions on the first page hereof, a beneficiary is granted:

(a) *The "Right of Withdrawal."* Such words shall mean that the beneficiary may elect by written request to the Company to withdraw at any time or times a part or all of the unpaid amount held for him under Option 1 or Option 2, provided that no such withdrawal shall be an amount less than $100 and further provided that such withdrawals shall be subject to any limitations set forth herein.

(b) *The "Right of Commutation."* Such words shall mean that the beneficiary may elect by written request to the Company to receive in one sum the commuted value of any unpaid installments except those which may be conditionally or unconditionally due under an annuity option. That is to say, installments to become due under Option 2 or Option 3 may be commuted, but no installments to become due under Option 4, Option 5 or Option 6 may be commuted. The commuted value shall be computed by the Company in accordance with the applicable provisions and rates of interest set forth in the Settlement Options of the Policy.

(c) *The "Right of Election of Other Options."* Such words shall mean that the beneficiary may elect by written request to the Company that any amount then held for him under Option 1 or Option 2 or the then present value of installments to become due to him under Option 3 may be paid under any other option elected by the beneficiary, provided, however, that election of Option 4, under any policy, or the election of Option 5 or Option 6, if available, must be made within one year after the Insured's death. Such words shall not be construed to mean that a beneficiary shall have the right to elect to receive proceeds payable under Option 1, Option 2, or Option 3 in lieu of payment under Option 4, Option 5 or Option 6.

Article IV. Minimum Amounts and Payments

(a) *Minimum Amount Which May Be Applied.* Unless specific directions to the contrary are set forth in the Payment of Proceeds section of this Direction for Settlement, if on a date when an option would otherwise have become operative the amount to be applied with respect to any beneficiary is less than $1000, the Company may pay the amount due such beneficiary in one sum, the contingent interest of any other beneficiary and the other provisions of this Direction for Settlement to the contrary notwithstanding.

(b) *Minimum Periodical Payments.* If any periodical payments provided for hereunder shall be each in an amount less than $20 and shall be payable more frequently than annually, the Company may adjust the time and amount of such payments to an annual basis.

(c) *Minimum Amount Retainable at Interest.* If any unpaid amount held for a beneficiary pursuant to this Direction for Settlement under Option 1 or Option 2 of the Policy shall be or become less than $500, the Company may pay the same forthwith in one sum to such beneficiary, the contingent interest of any other beneficiary and the provisions of this Direction for Settlement to the contrary notwithstanding.

Article V. Determination of Facts

The Company in determining the persons comprising any class, the address, age and status of death or any facts relating to any persons or legal entities either as a class or otherwise may rely solely on affidavit or other written evidence satisfactory to it and shall be relieved and discharged from all liability and responsibility in making payment in accordance therewith and in acting in reliance thereon.

Article VI. Assignment of Policy

If there is on file with the Company any collateral assignment of the Policy which the proof of the death of the Insured is received, the rights of any beneficiary designated herein shall be subordinate to the rights of any assignee of record and any payment under the Policy due at the death of the Insured to the assignee of record shall be made in one sum. If the assignment is unconditional as to any beneficiary, then any part of the Proceeds remaining after full payment of the debt due the assignee of record as directed in the Payment of Proceeds section of this Direction for Settlement, subject to the provisions of Article IV.

This Direction for Settlement has been executed by the undersigned in duplicate and the Company is requested to retain one copy hereof in its files and attach the other copy to the Policy.

Dated and signed at _____ this _____ day of _____, 19__.

A-18

[illegible] AMENDMENT OF APPLICATION

(This form is to be used for Policy changes only, including Juvenile Policy changes.)

Policy No. 137501 RHODES

I (We) the undersigned, hereby amend my (our) application to the PACIFIC NATIONAL LIFE ASSURANCE COMPANY, dated Dec. 15, 19[illegible], as follows:
Date of Application

Plan of Policy ..... Sum Insured $ .....

Original Policy Date ..... Annual Premium $ .....

I (We) hereby apply for the following

Plan of Policy applied for .....

Sum Insured $ .....

Premium $ .....

Date of changed Policy if other than Original Policy date .....

.....

Commuted Value to be paid at the option of the primary or contingent beneficiary.

I (We) hereby agree that these changes shall be an amendment to and form part of the said application and of the policy issued thereunder, if any, and that they shall be binding on any person who shall have or claim any interest under such policy.

I (We) further agree that, if the policy is redated, the contestable clause as described in such policy shall be effective commencing from the new policy date.

Dated at Phoenix, Arizona this 29 day of January, 19 62

Edward A. Shields
Witness to Signature of Insured

Wm. Rudolph Rhodes
Signature of Insured

Signature of Agent

Signature of Owner if other than the Insured

Form S-3-H 12-57

Received and recorded in the office of Pacific National Life Assurance Company this 2nd day of February, 1962.

[illegible]

POLICY LOANS

CASH LOANS. After this Policy has a cash value, and while it is in force, except as extended term insurance under the non-forfeiture options, the Company will lend, on the sole security and upon written assignment of this Policy, a sum not exceeding the cash value at the end of the current policy year as shown in the Table of Non-Forfeiture Values, less any existing indebtedness on account of this Policy and accrued interest thereon. There shall be deducted from the proceeds of such loan interest to the end of the current year and any unpaid premium for such year.

AUTOMATIC PREMIUM LOANS. Upon request made in the application or upon subsequent written request received by the Company at its Home Office in San Francisco, California, prior to the expiration of the grace period, and until a written revocation of such request has been received at the Home Office in San Francisco, California, any premium which remains unpaid at the end of the grace period will automatically be paid by a loan granted by the Company under the terms and conditions of this Policy Loans provision. Provided, however, if the loan value then available is insufficient to cover the entire amount of any premium due when this provision would otherwise be operative, no automatic loan shall be made and the premium shall be in default.

INTEREST AND REPAYMENT. Interest shall be at the rate of 5½% a year, payable in advance. Unpaid interest shall be added to existing indebtedness and bear interest on the same terms. Any loan may be repaid in whole or in part during the lifetime of the Insured and prior to maturity of the Policy, provided that a loan which existed at expiration of the grace period may not thereafter be repaid unless this Policy be reinstated. Failure to repay any loan or to pay interest, shall not void the Policy unless the total indebtedness shall equal or exceed the loan value at the time of such failure nor until 31 days after notice shall have been mailed to the Insured and to any assignee of record at the Home Office in San Francisco, California, at their respective last known addresses.

NON-FORFEITURE VALUES

BASIS OF NON-FORFEITURE VALUES. The cash values on any policy anniversary are calculated by the Standard Non-Forfeiture Value Method. The non-forfeiture factors per $1000 of Amount of Insurance are, when required by law, on file with the Insurance Department of the State in which the Policy is delivered. All such calculations are based upon the Commissioner's 1941 Standard Ordinary Table of Mortality and an interest rate of 3½% until the "Policy Anniversary on Which Interest Rate Changes," as shown below the table of non-forfeiture values, and 2¾% thereafter, provided, however, that in calculating extended term insurance and pure endowment, the rate of mortality used is 130% of the rates according to said table. These calculations are also based upon the assumption that deaths occur at the end of the policy year. The amount of paid-up insurance, the amount of pure endowment and the periods of extended term insurance are such as the corresponding cash values will provide at the then attained age, nearest birthday, of the Insured. The non-forfeiture values are no less than the minimum required by the State in which the Policy is delivered.

TABLE OF NON-FORFEITURE VALUES. Values given in the Table of Non-Forfeiture Values are for a policy free of indebtedness and for lapses occurring with premiums paid for completed policy years, proportionate allowance being made in determining values from said table for the fractional part of a policy year's premium that has been paid. Values for policy years beyond those shown in said table will be furnished upon request.

NON-FORFEITURE OPTIONS. Any one of the following non-forfeiture options, the values of which are stated in the Table of Non-Forfeiture Values, may be elected by written request received by the Company at its Home Office in San Francisco, California, not later than sixty days after the Due Date of any premium in default and prior to the death of the Insured.

Cash Value. The cash value of the Policy will be paid upon surrender of the Policy, or

Paid-up Insurance. This Policy will be continued from the Due Date of the premium in default for a reduced amount of paid up insurance payable at the same time and subject to the same conditions as this Policy, or

Extended Term Insurance. The insurance hereunder will be continued as extended term insurance from the Due Date of the premium in default. The term insurance shall not extend beyond the Maturity Date of this Policy. If the value used to purchase extended term insurance is more than enough to continue this Policy to its Maturity Date, the excess shall be applied to purchase a pure endowment payable in one sum on the Maturity Date provided the Insured be then living.

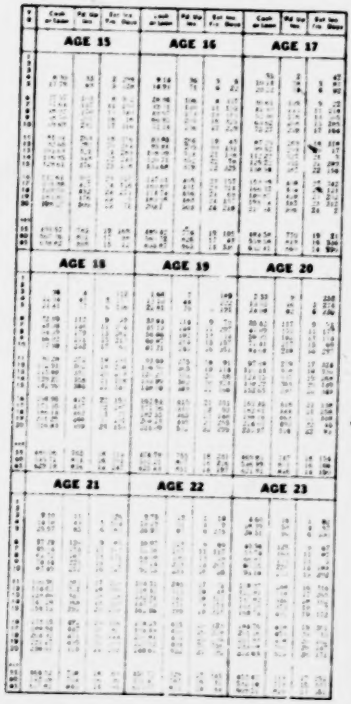
Automatic Option. If no election is made within sixty days after the Due Date of a premium in default, the Policy will be automatically continued as extended term insurance.

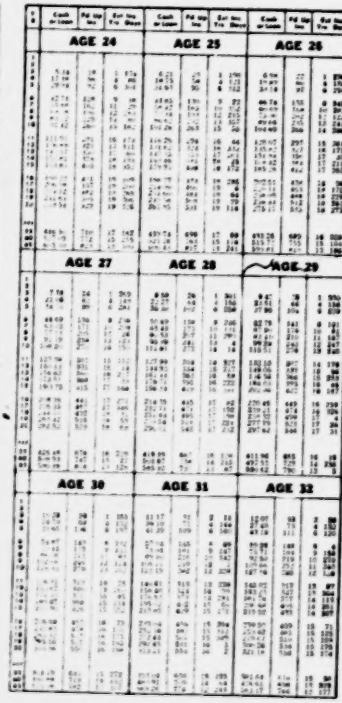
If at the date of lapse the premiums have been paid to the end of the policy year for which a cash value is first shown in the Table of Non-Forfeiture Values, or if this Policy shall have become paid up by completion of all premium payments, the paid-up insurance or extended term insurance under which this Policy is continued may be surrendered at any time for an amount equal to the net single premium at the attained age of the Insured for the remaining benefits under such insurance, computed on the same interest and mortality assumptions as set forth above. Provided, however, that if the date of surrender is within the thirty day period immediately following a policy anniversary, such amount will not be less than the amount of net single premium on such policy anniversary.

EFFECT OF INDEBTEDNESS ON NON-FORFEITURE OPTIONS. Any indebtedness under this Policy shall be deducted from the cash surrender value otherwise payable and from the amount of insurance extended under the extended insurance option. The amount of paid-up insurance and the term of extended insurance and amount of pure endowment, if any, shall be reduced to such as the cash surrender value less indebtedness will provide at the attained age of the insured.

TABLE OF NON-FORFEITURE VALUES FOR EACH $1,000 AMOUNT OF INSURANCE

Cash, Paid Up Insurance and Pure Endowment Values for an Amount of Insurance greater or less than $1000 will be proportionately increased or decreased. The periods of Extended Term Insurance will be the same for any Amount of Insurance. Age refers to age of Insured on the Date of Policy as shown on the face of the Policy. Pure endowment values, where available, appear in the column headed "Days" opposite or below the $ sign.





The "Age" below refers to age of Insured on the date of Policy as shown on the face of the Policy. The "Policy Anniversary on Which Interest Rate Changes" is shown opposite the "Age."

Age	Policy Anniversary on Which Interest Rate Changes
15	30
16	30
17	29
18	29
19	28
20	28
21	27
22	27
23	26

Age	Policy Anniversary on Which Interest Rate Changes
24	26
25	25
26	25
27	25
28	25
29	25
30	25
31	25
32	25

I, ... [illegible] ... of ...

For ... on Policy No. 142.85 on Morris Orval Phillips (Name of Insured)

Current address: 2010 N. 70th Place Scottsdale, Arizona 85257

I hereby request the above numbered policy to be changed as follows:

Change to Modified Premium Term to Executive Whole Life, with Waiver of Premium and Automatic Premium Loan on Annual Basis. Premiums to be Continued on Original Basis.

[illegible] ... Insurance ... [illegible]

DECLARATION OF INSURABILITY

1. Since the date of the application or last medical examination, if any, for the insurance or any other person insured under the policy:

a. Has ... [illegible] ... been ... [illegible] ... or ... [illegible] ... or ... [illegible] ... or

PACIFIC NATIONAL LIFE ASSURANCE COMPANY
HOME OFFICE • SAN FRANCISCO, CALIFORNIA

APPLICATION

To be used for conversion of term insurance, policies issued under a guaranteed insurability benefit, or other changes of plan not requiring evidence of insurability.

I hereby apply for the following:

Name: MORIS ORVAL RHODES

Address: 2612 N. 70th Place

Scottsdale, Arizona 85257

Age: 33

Plan of Policy applied for: Executive Whole Life with Waiver of Premium and Automatic Premium Loan
Remaining Term to be continued on Original Base Policy.

Sum Insured: $ 10,000

Annual Premium: $ 184.90

Policy date: December 11, 1967

Beneficiary: Same as Settlement Option in #12838

Dated at Phoenix, Arizona This 21st day of December 19 67

Signature of Insured

Signature of Owner if other than the Insured

WIFE'S INSURANCE BENEFIT
FOR
ADDITIONAL INSURANCE OVER A TERM PERIOD AND PAYABLE AS A MONTHLY INCOME TO THE END OF THE PERIOD OR UPON ELECTION AS A SINGLE PAYMENT, IF THE INSURED'S WIFE'S DEATH OCCURS DURING THE PERIOD

The Company agrees, subject to the terms and conditions of this Provision and the policy, to pay the following benefits immediately upon due proof of the death of the Insured's wife named in the application, while the policy and this Provision are in force:

1. For each unit of this benefit shown on page 3
   a. $1,000 payable immediately in one sum.
   b. If the wife has not attained age 50, a monthly income of $50 beginning at the date of the Insured's wife's death and payable at monthly intervals until the end of the month in which the Insured's wife would have attained age 50.
2. If a Children's Benefit is attached to the policy, it will be continued in force as fully paid-up term insurance to the child's 25th birthday.

The Date of Issue of this Provision, which is the date the Term Period begins, and the date the Term Period ends are as specified on page 3 for this Benefit.

The Benefit under this Provision is payable in addition to any amount otherwise payable under the policy.

This Provision is made a part of the policy to which it is attached, in consideration of the application, a copy of which is attached to and made a part of the policy, and payment of the premiums specified on page 3 applicable to this Benefit and the Life Insurance Benefit.

Whenever premiums are waived under the policy in accordance with a Disability Benefit Provision, premiums shall be waived under this Provision.

Payment of Proceeds

Any proceeds payable under this Provision because of the death of the Insured's wife will be paid to the Insured, if living, otherwise to the estate of the Insured's wife, unless otherwise provided. The payee may elect to receive the commuted value of such monthly income in one sum. The commuted value shall be computed by discounting the monthly income payable at 3% interest, compounded annually.

Incontestability, Suicide, Misstatement of Age

As applied to this Provision, the periods stated in the Incontestability and Suicide provisions of the policy shall be measured from the date of issue of this Provision and shall apply to the Insured's wife and to the Insured and the Misstatement of Age provision of this policy shall apply also to the Insured's wife.

Exchange of Policy for a New Policy

This Provision may be included as a part of any policy, except a term policy for which this policy is exchanged if

a. The date of issue of the new policy is the same as this policy or an anniversary of this policy, and
b. The new policy and the Provision are in the same premium class, and
c. Premiums under the new policy are payable at least to the end of the Term Period of this Provision, and
d. The Sum Insured of the new policy is the same as this policy.

Reinstatement

Reinstatement of the policy while including this Provision will require the submission to the Home Office of evidence satisfactory to the Company of the insurability of the Insured's wife covered under this Provision, in addition to the other requirements stated in the policy.

Benefit After Death of Insured

In the event of the Insured's death while the policy and this Benefit are in force, in place of all other benefits hereunder, the Company will issue to the Insured's wife a paid-up term life insurance policy in the amount of $1,000 Sum Insured for each unit of this Benefit shown on page 3, which will expire on the policy anniversary following the Insured's wife's 65th birthday.

Termination

This Provision will terminate without value, subject to the "Exchange of Policy for a New Policy" Provision, upon the earliest of

a. The lapse, exchange or termination of the policy, or
b. The payment or application of the surrender value of the policy, or
c. The due date of the premium next following receipt at the Company's Home Office of a request for discontinuance by written notice and presentation of the policy for adjustment, or
d. The date the policy becomes fully paid-up, or
e. The end of the Term Period.

Signed for the Company at San Francisco, California

SECRETARY

PRESIDENT

CHILDREN'S BENEFIT
FOR
TERM INSURANCE TO AGE 25

This Provision is made a part of the policy to which it is attached, in consideration of the application and payment of the premium specified on page 3 applicable to this Benefit and the Life Insurance Benefit.

Subject to the terms and conditions of this Provision, the Company will pay the amount of the Children's Benefit shown on page 3 to the Owner of the policy immediately on receipt of due proof of the death of a child as defined herein, prior to that child's 25th birthday.

Child

"Child" as used in this rider means (1) each of Insured's children or step-children who is named in the application for this rider, who is at least 15 days old or becomes 15 days old, and who at the date of application has not attained age 19, and (2) each child born to or legally adopted by the Insured who becomes 15 days old and who at the date of adoption has not attained age 19.

Paid-Up Term Insurance

If the Insured dies while this benefit and the policy is in force the amount of Children's Benefit will be continued in force as fully paid-up term insurance to the child's 25th birthday.

Exchange of Provision for a Policy

While this Provision and the policy are in force the insurance on each child may be exchanged for any plan of limited payment life or the Owner on the termination of this Provision or within 31 days prior thereto.

The amount of insurance of each new policy must not be less than the minimum required by the Company for the plan selected. The amount of insurance of the new policy for a child may not be greater than five times the amount of the Children's Benefit.

The date of each new policy shall be the first of the month in which written notice to exchange this Provision is filed at the Home Office. Each new policy shall be issued at the premium rates in use by the Company at the date of conversion for a mortality classification of this rider and for the attained age last birthday of the person insured under such new policy.

Waiver of Premium

Whenever premiums are waived under the policy in accordance with the Disability Benefit Provision, premiums shall be waived under this Provision.

Automatic Termination

This rider shall automatically terminate without value: (1) if any premium remains unpaid after the grace period; (2) if the policy or this Provision is surrendered or continued under a non-forfeiture provision, if any, or cancelled; (3) if the policy becomes paid-up, matures or terminates; (4) on policy anniversary following age 65 of the Insured; or (5) at the death of the Insured subject to the provisions for paid-up term insurance.

Insurance on a child shall automatically terminate on such child's 25th birthday.

Reinstatement

In addition to the provisions of the policy relating to reinstatement, reinstatement of this rider shall be subject to evidence of insurability of each child then insured under this rider.

Incontestability, Suicide

The terms and conditions of the Incontestability and Suicide provisions of the policy shall apply to this Provision except that they shall relate to the Child and the period stated shall be measured from the date of issue of this Provision.

Signed for the Company at San Francisco, California.

SECRETARY

PRESIDENT

SEE BOOKLET

CHB

Part II. Statements made by me in continuation of and as a part of the application for a policy of insurance in Pacific National Life Assurance Company.

1. Who is your Doctor? Ray P. Inscore, M.D. His Address? Prescott, Ariz.
   A. When and why did you last consult him? 2/27/65 - Torn ligaments right foot
   B. What did he tell you about his findings? same
   C. What treatment and drugs did he prescribe? Ace Bandage and crutches 1 week duration
   D. Are you still under treatment? Yes ☐ No ☒
   E. Any prior consultations with him? Yes ☒ No ☐
   If yes, give details including why, treatment prescribed, dates of onset and recovery and final diagnosis. Feb. 1965 - Pain right side of back. Diagnosed as pleurisy. Muscle for relaxant prescribed. Intermittent for 1 month duration, No recurrence

2. What other sicknesses, operations, injuries, or checkups have you had since childhood?

Condition	Dates	Treatment	Recovered?	Names and Addresses of Doctors
Pneumonia, syphilis & brain fever	1939	Medical	yes	Hospitalized in Tulsa, Okla. Dr's name unknown
Malta fever	1944	Medical - injections	Tulsa	used for 1 year - Complete recovery - Dr. unknown Tulsa, Okla.
Appendectomy	1951	Surgery	yes -	Memorial Hosp. Dr. Mowell, Phoenix, Ariz.
T.A.	1941	Surgery	yes	Tulsa, Okla - Dr. unknown -
Pyelitis	1964	Medical (current treat)	yes	Dr. Allen A. Brandon, Phoenix Ariz.
Pleurisy	1958	Tests	yes	Cherry Lynn Clinic, Long Beach, California Dr. Unknown -

3. Have electrocardiograms, X-rays, blood studies or other special diagnostic tests been made? When, where, why and by whom, please? Yes or No: Yes
   £X6 - 1958 - Cherry Lynn Clinic, Long Beach, Calif. X-rays - chest 1965 - Dr. Inscore, Prescott, Ariz.

4. Have you been a patient in a hospital, sanitarium or similar institution? When, where, why and how long, please? Yes
   See details A also 3 Normal deliveries.

5. Have you been rated up, postponed, declined or waivered for life or accident and health insurance? Details and companies, please. No

6. Have you applied for or received disability payments from insurance companies, the military services or Veterans' Administration? Details, please. No

7. Have any of your family had:

A. Heart Disease or arteriosclerosis?	No
B. Angina attacks or coronary attacks?	No
C. High blood pressure or strokes?	Mother Age 70
D. Diabetes mellitus?	No

If yes to A, B, C or D, complete 8.

8.

	LIVING Age	LIVING Health Status	DEAD Age	DEAD Cause of Death	DEAD Year
Father	57	Good			
Mother	52	Good			
Brothers Number (0)					
Sisters Number (1)	17	Good			

I have read the above statements and answers and declare that the same are true and complete to the best of my knowledge and belief and agree that they shall constitute a part of this application. I hereby waive to such extent as may be lawful on behalf of myself and of any person who shall have or claim any interest in any policy issued hereunder, all provisions of law forbidding any physician or other person who has attended or examined me, or who may hereafter attend or examine me, from disclosing any knowledge or information which he thereby acquires.

Dated this 28 day of April 1965

Witnessed by [signature] Medical Examiner — M. D.

[signature] Signature of Proposed Insured

AUTHORIZATION

TO WHOM IT MAY CONCERN I hereby request and authorize you to such extent as may be lawful to disclose, whenever requested to do so by PACIFIC NATIONAL LIFE ASSURANCE COMPANY or its representative, any and all information and records available on or prior to the date below when under observation by you. Photostat of this authorization is to be considered acceptable.

Dated this 28 day of April 1965

Witnessed by [signature] — [signature] Signature

1. REGARDING PROPOSED INSURED NAMED IN PART I
Build: 5 Ft. ___ In. 165 Lbs.
Weight change in past year? No ___ Lbs. Gained ___ Lbs. Lost
Reason for any change? N/A

2. Complete only when Payor Benefit OR Wife's Insurance Benefit is requested. Questions apply to Payor, if Payor Benefit, otherwise to Wife.

FULL NAME	Mo.	Birthdate Day	Year	Age	Birthplace State or Cntry.	Sex	Ft.	Build In.	lbs.	If Married Woman, Maiden Name	Total Insurance in force	All Occupations (list employer, type of industry, all duties)
BEVERLY Jo BURNES	3	6	'37	28	[illegible]	F	5	5	120	[illegible]	1000	HOUSEWIFE

3. Must be completed if Children's Insurance Benefit is requested. List only Applicant's unmarried children, including legally adopted children and step-children, who are under age 19 and members of the Applicant's household.

	Given Name	Sex	Birthdate
a.	NITASHA Faye BURNES	F	5-2-66
b.	TARA Alicia BURNES	F	1-19-67
c.	ERIC James BURNES	M	9-16-63
d.			
e.			
f.			

Are all unmarried children under age 19 included above? ☒ Yes ☐ No If No, please explain ___

So far as you know and believe –

	Yes	No
4. Has Proposed Insured or any person proposed for insurance listed above consulted or been treated by a physician or practitioner or hospitalized in the past 5 years?	☒	☐
5. Has Proposed Insured or any person proposed for insurance ever had –		
a. Any indication or diagnosis of disease or disorder of:		
(1) Lungs or respiratory system; tuberculosis, asthma?	☐	☒
(2) Heart or circulatory system; high or low blood pressure?	☐	☒
(3) Digestive system–stomach, intestines, liver, gall bladder?	☐	☒
(4) Brain or nervous system; paralysis, convulsions?	☐	☒
(5) Muscles, bones, joints; rheumatism, arthritis?	☐	☒
(6) Genito-urinary system–kidneys, bladder, reproductive organs?	☐	☒
IF MARRIED WOMAN–(a) Has she ever had complication of pregnancy?	☐	☒
(b) Is she pregnant? If so, ___ months.	☐	☒
b. Impaired sight or hearing; other physical impairments, sickness, mental disorder, injury; cancer, growth, rupture, syphilis, drug addiction?	☐	☒
c. An operation, restricted diet; use of insulin, heart or blood pressure medicine or operation been advised?	☐	☒
d. Close association with a tubercular person in the past 5 years?	☐	☒
e. A parent, brother or sister who –		
(1) Has or has had a mental disorder, cancer, tuberculosis, diabetes, or stroke?	☐	☒
(2) Died before age 60? (Relationship? Age? Cause of death?)	☐	☒
6. Has Proposed Insured or any person proposed for insurance made claim for or received any accident or sickness benefit within the last 5 years?	☐	☒

Full details of Yes answers to questions 4 through 6. Include every person to whom a Yes answer applies.

Name of Person and Question No.	Condition	Date Occurred	Duration	Degree of Recovery	Details – Name and Addresses of Physicians, Hospitals or Clinics
All Children Nose	Head colds,	[illegible]	[illegible]	[illegible]	Dr. Raymond Thomas, Mahaffey Pike Co. Hospital, Pa. Area
BEVERLY	KIDNEY TROUBLE	1964 end	[illegible]	[illegible]	Dr. Alfred Gerstley M.D. 5031 N. Carlisle Pine Area
MORIS	Sinus Infection	[illegible]	[illegible]	[illegible]	[illegible] 1313 N. [illegible] Philadelphia Area
	Tonsils & Adenoids	Nov 62			Dr. [illegible] Mahaffey Pike Co. Hospital, Pa.

I agree (1) that I shall be bound by all statements and representations made on this application and any medical examinations required by the Company, (2) that no information acquired by any Company representative shall bind the Company unless set out in writing in this application, and (3) that no waiver or modification shall bind the Company unless in writing and signed by an officer of the Company. (4) The answers are true and complete to the best of the undersigned's knowledge and belief

Date 4/17/65

X [signature] (Signature of Proposed Insured (if below age 15, signature of applicant)

Agent Edward A Shields CLU
Witness

X [signature] (Signature of Spouse or Payor named in Question 2 above)

Basic Plan and or Additional Benefit Provisions	Amount or Units	Mode of Payment	Automatic Premium Loan
Family Life	Three Units	☐ Annual ☐ Semi Annual ☐ Quarterly ☐ Monthly ☑ Check O Matic ☐ Econo Check ☐ Government Allotment	☒ Yes ☐ No Dividend Option for Participating Plans ☐ Cash ☐ Accumulations ☐ Premium Reduction ☐ Paid up Add.

1. Full name of Proposed Insured: Morris C. Rhodes — Social Security No.:
2. All Occupations (List employer, type of industry, all duties): MANAGER - PACIFIC FINANCE OFFICE

3. Birthdate Mo.	Day	Year	Age	Birthplace State or Conty	Sex	If Married Woman, Maiden Name
5	11	34	30	[illegible]	M	

SPECIAL REQUESTS:

4. Address	Street, Number, RFD	City or Town	County	State	Zip Code or Zone	How Long There?	Notices to (x)
Home	726 Dorcas	[illegible]	Yamhill	Oreg.		Two months	✓
Business	101 W Court	[illegible]	Yamhill	Oreg.		" "	

5.	Full Names	Relationship	Birthdates
a. Beneficiary			
b. Contingent Beneficiary			

c. The right to change the Beneficiary is reserved to the Owner unless otherwise indicated.

6. Has Proposed Insured or any other person proposed for insurance —	Yes	No	Details concerning question No. 6
a. Engaged in aviation activities or hazardous sports, or hobbies, or expects to do so? (If Yes, please fill out and attach Form A 92)	☐	☒	
b. An application for insurance pending with any other company or will insurance applied for at this application replace any insurance coverage? (Give details, including amount and company.)	☐	☒	
c. Been rated, postponed, declined or waived for life or accident and health insurance?	☐	☒	

7. List Proposed Insured's Present Insurance

Company	Amount	Accidental Death Ben.	Dis. Inc.	Was Exam Made?	Year of Issue
NF Group	15,000	30,000	200	Yes	64
Farm Bureau	3,000	[illegible]	[illegible]	Yes	64
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

HOME OFFICE ADDITIONS OR CORRECTIONS: (Do not use this space)

8. Name of Owner, if other than Proposed Insured — Relationship of Owner to Proposed Insured:
Address of Owner:
If Owner is a Corporation — Where and when incorporated? State: Date:

9. MILITARY APPLICANTS ONLY:
a. Serial No. _____ Pay Grade _____
Discharge — Effective date of Allotment
b. Date _____
c. Mail Policy to: ☐ Agent ☐ Beneficiary ☐ Home ☐ Station
d. Current residence address of persons proposed for coverage if not listed in No. 4 above:

(1) Except as provided in the Conditional Premium Receipt, the Company shall incur no liability under this application until it has been received and approved, a policy issued and delivered, and the full initial premium has been paid to and accepted by the Company while the health and occupation of the Proposed Insured and any person proposed for coverage remains as described in the application. In such case the policy shall take effect as of the date of the policy. (2) Only an officer of the Company can make, modify or discharge contracts or waive any of the Company's rights or requirements and then, only in writing. No statement, representation or promise made by any other person shall be binding upon the Company. (3) The Company is authorized to amend this application in the space entitled "Home Office Additions or Corrections" and acceptance by the Applicant of any policy issued on this application shall constitute a ratification of any such amendment, except that in those States where written consent is required by statute or insurance department regulation any amendment as to amount, risk classification, plan of insurance or benefits shall be made only with the written consent of the Proposed Insured and the Applicant if other than the Proposed Insured.

Date Apr 12, 1965 — X Signature of Proposed Insured

№ 518635

Agent Edward Shadeau — Witness — X Applicant Signature: Morris C Rhodes

Give title if signed on behalf of a Corporation

Form A 1 (11/65)

beneficiary or the Owner for its cash value, be applied under any one of the settlement options hereinafter provided or in any other manner that may be agreed upon with the Company. With respect to proceeds payable on the death of the Insured, if on such death no election by the Owner is in effect, an election may be made by the Beneficiary on such death or within one year thereafter and before any payment has been made hereunder.

OPTION 1. Left with the Company at interest for a period not exceeding 30 years, the interest to be paid annually.

OPTION 2. Paid in Installments of a Specified Amount each month, or other stated interval, such installments to continue until the proceeds, together with interest, are exhausted.

OPTION 4. Converted into a Life Income With Installments Certain paying equal monthly installments for a period of 60, 120, 180, or 240 months certain and as long thereafter as the payee shall live, the amount of each installment to be determined in accordance with Option 4 Table below, subject to satisfactory proof of the age of payee. No computation may be made of installments which may conditionally or unconditionally become due under Option 4.

These options are not available if the proceeds so retained are less than $1000 for any payee or if the payee is other than a natural person. If the amount of any payment would be less than $10.00, the interval between payments may be increased to a quarter year, half year or year as may be required to make the payment at least $10.00.

OPTION 3 TABLE — Limited Installments

Installments for Limited Number of Years for Each $1,000 of Proceeds

Term of Installment Payments Annual	Semi-Annual	Quarterly	Monthly
Years			
1	$503.09	$252.32	$84.28
2	$306.17	254.65	127.72	42.66
3	341.60	171.85	86.19	28.79
4	259.33	130.47	65.44	21.86
5	210.00	105.65	52.99	17.70

Term of Installment Payments Annual	Semi-Annual	Quarterly	Monthly
Years			
6	$177.12	$ 89.11	$ 44.69	$14.93
7	153.65	77.30	38.77	12.95
8	136.07	68.45	34.33	11.47
9	122.40	61.58	30.88	10.32
10	111.47	56.08	28.13	9.39

Term of Installment Payments Annual	Semi-Annual	Quarterly	Monthly
Years			
15	$ 78.80	$ 39.64	$ 19.88	$ 6.64
20	67.58	31.48	15.79	5.27
25	62.95	26.64	13.36	4.46
30	60.61	23.45	11.76	3.93

OPTION 4 TABLE — Life Income with Installments Certain

Monthly installments for each $1,000 of proceeds according to sex of the payee and age at nearest birthday when the first installment is payable and the number of months for which payments certain are guaranteed.

Age Male	Age Female	No. of Months Certain 60	120	180	240
*5	10	$2.63	$2.63	$2.62	$2.61
6	11	2.64	2.64	2.64	2.62
7	12	2.66	2.66	2.65	2.63
8	13	2.68	2.67	2.67	2.64
9	14	2.69	2.69	2.68	2.65
10	15	2.71	2.71	2.70	2.70
11	16	2.73	2.73	2.72	2.71
12	17	2.75	2.74	2.74	2.73
13	18	2.77	2.76	2.76	2.75
14	19	2.79	2.78	2.78	2.77
15	20	2.81	2.80	2.80	2.79
16	21	2.83	2.82	2.82	2.81
17	22	2.86	2.85	2.84	2.84
18	23	2.88	2.87	2.87	2.86
19	24	2.91	2.90	2.89	2.88
20	25	2.93	2.92	2.92	2.91
21	26	2.96	2.95	2.95	2.93
22	27	2.99	2.98	2.97	2.96
23	28	3.02	3.01	3.00	2.99
24	29	3.05	3.04	3.03	3.02
25	30	3.08	3.07	3.07	3.05
26	31	3.12	3.11	3.10	3.08
27	32	3.15	3.14	3.13	3.11
28	33	3.19	3.18	3.17	3.15
29	34	3.23	3.22	3.20	3.18
30	35	3.27	3.26	3.24	3.22
31	36	3.31	3.30	3.28	3.25
32	37	3.36	3.34	3.32	3.29
33	38	3.40	3.38	3.36	3.33
34	39	3		3.41	3.37
35	40	3		3.45	3.41
36	41	3.53		3.50	3.45
37	42	3.61		3.55	3.50
38	43	3.66		3.60	3.54
39	44	3.72		3.65	3.59
40	45	3.78	3.76	3.71	3.64
41	46	3.85	3.82	3.77	3.69
42	47	3.92	3.88	3.82	3.74
43	48	3.99	3.95	3.88	3.79
44	49	4.06	4.02	3.95	3.84
45	50	4.14	4.09	4.01	3.90
46	51	4.22	4.17	4.08	3.95
47	52	4.31	4.25	4.15	4.01
48	53	4.40	4.33	4.22	4.07
49	54	4.49	4.42	4.29	4.12
50	55	4.59	4.50	4.37	4.18
51	56	4.69	4.60	4.44	4.24
52	57	4.80	4.69	4.52	4.30
53	58	4.91	4.79	4.60	4.36
54	59	5.03	4.90	4.69	4.42
55	60	5.15	5.01	4.77	4.47
56	61	5.28	5.12	4.86	4.53
57	62	5.42	5.23	4.94	4.59
58	63	5.56	5.35	5.03	4.64
59	64	5.72	5.48	5.12	4.70
60	65	5.87	5.61	5.21	4.75
61	66	6.04	5.74	5.30	4.80
62	67	6.22	5.87	5.39	4.85
63	68	6.40	6.01	5.48	4.90
64	69	6.59	6.16	5.56	4.94
65	70	6.79	6.30	5.65	4.98
66	71	7.00	6.45	5.73	5.02
67	72	7.23	6.60	5.82	5.05
68	73	7.46	6.76	5.90	5.09
69	74	7.70	6.91	5.97	5.12
70	75	7.95	7.07	6.05	5.14
71	76	8.22	7.23	6.12	5.17
72	77	8.50	7.38	6.18	5.19
73	78	8.78	7.54	6.24	5.20
74	79	9.08	7.69	6.30	5.22
75	80	9.40	7.84	6.35	5.23
76	81	9.72	7.98	6.39	5.24
77	82	10.05	8.13	6.44	5.25
78	83	10.39	8.26	6.47	5.26
79	84	10.75	8.39	6.50	5.26
80	85	11.11	8.51	6.53	5.26
81	86	11.47	8.63	6.55	5.26
82	over	11.85	8.73	6.57	5.26
83		12.23	8.83	6.59	5.26
84		12.61	8.92	6.60	5.26
85 or over		12.99	9.00	6.61	5.26

*Also applies to younger ages

The first installments of Options 2, 3 and 4 will be payable as of the date the proceeds accrue or the date the option is elected, whichever is later.

INTEREST. Interest allowed on funds applied under Options 2, 3, or 4 shall be at the rate of 2½ % a year, compounded annually. Interest at the rate of 2½ % will be paid annually on funds left with the Company under Option 1. The Company will allow each year on funds retained under Options 1, 2, or 3, or payments certain under Options 4, such excess interest, if any, as it may from year to year declare on these funds.

ELECTION OF SETTLEMENT OPTIONS. Election or revocation of settlement options must be in writing filed at the Home Office in San Francisco, California. An election may be revoked at any time before the maturity of the Policy. An election shall be automatically and wholly revoked by subsequent change of beneficiary or assignment of the Policy.

GENERAL PROVISIONS. At the death of the payee (including the last surviving beneficiary entitled to benefits) the Company will, in the absence of any agreement to the contrary, pay to the payee's executors or administrators (a) any unpaid sum left with the Company under Options 1 or 2, together with any unpaid interest thereon, or (b) the value of any remaining unpaid installments under Option 3 or for the number of months for which payments certain are payable under Option 4.

ENDORSEMENTS

BENEFIT PROVISIONS REVISED TO BE THE BENEFIT AS STATED ON PAGE 3 OF THE POLICY.

BENEFIT DESCRIPTION	AMOUNT	ANNUAL PREMIUM
WIFE'S INSURANCE BENEFIT	3 UNITS	$79.50
CHILDREN'S INSURANCE BENEFIT	3,000 for each child	18.00

SO LONG AS PREMIUM PAYMENTS ARE RECEIVED BY ANY FORM OF SPECIAL MONTHLY PREMIUM, ACCEPTABLE TO THE COMPANY, A SPECIAL MONTHLY PREMIUM OF $ 20.00 WILL BE ACCEPTED

$25.66

NOTICE

In collecting the insurance or any benefit under this Policy, it is not necessary for the Insured or the Beneficiary to employ any person. Write direct to the Home Office of the Company at San Francisco, California, stating policy number.